



A STUDY OF MOHAMMAD HAMIDULLAH'S WORKS ON ISLAMIC LAW

THESIS

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BY

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Under the Supervision of

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Abstract

Dr. Muhammad Hamidullah (1908A.D.-2002A.D.) is one of those eminent scholars of the Indian subcontinent who have left great impact on the Muslim world through their significant contribution to the fundamental sciences of Islam and great services to the society at large. Although he belonged to Hyderabad (A.P., India) but he passed major parts of his life in Paris occupying himself with giving lectures and writing books on major religious themes especially *Qur'ân*, *Hadîth*, *Fiqh* and Islamic history. His published works on these subjects are about 150 and have been universally recognized in the academic circle from the point of richness of material and high standard of research.

In the field of Quranic studies, his contributions are mainly, translations the Holy *Qur'ân* into three languages of West i.e. French, English and German, edition and publication of *Mushaf-e-Uthmâni* and collection and compilation of the bibliography of translations of the Holy *Qur'ân* in 125 different languages of the world. Dr. Hamidullah's contribution to *Hadîth* literature is also much significance. He did his best to establish the authenticity and historicity of *Hadîth* literature with strong evidences and convincing arguments. In the field of *Hadîth* Dr. Hamidullah showed main interest in the study of history of its compilation and in the discovery of the earliest collections of *Hadîth*. He

was successful in this venture as he discovered some very early collection of *Ahâdîth* including *Sahîfah Hamâm Ibn Munabbih*. On the basis of these collections he removed the misgiving spread by orientalists and also by some unknowing Muslim scholars under their influence that in the early period, the *Ahâdîth* were transmitted only orally and there was no system of preserving them in written form. So, the *Ahâdîth* cannot be considered accurate and reliable. He brought out impressive evidences to show that apart from a number of companions who had prepared their own personal collections of *Ahâdîth*, a large number of *Ahâdîth* had been dictated by Prophet Muhammad (SAW). Another contribution of learned author was collection and compilation of *Kitâb al- Sard*, one of the earliest collections of *Hadîth*.

In the field of Islamic history his works are mainly related to the *Sîrah* of Prophet Muhammad (SAW) in French, English and Urdu. The significant contribution of Dr. Hamidullah to *Sîrah* is that he has written on such aspects of *Sîrah* which were not touched by other scholars or were dealt with in marginal manner like judicial system in the time of Prophet (SAW), political life of the Prophet, state administration, diplomatic relation and educational system in the period of the Prophet (SAW). With regard to the *Sîrah* another significant contribution was collection and compilation of the documents of the times of the Prophet

(SAW) which included the text of his letters and that of his agreements with the people of Makkah and different tribes of Madinah and adjoining areas. He also discussed the role of different tribes in the development of the Prophet's mission, which helps to understand the background and rationale of many decisions taken by the Prophet (SAW) particularly in relation to his agreement with different tribes. Dr. Hamidullah also studied thoroughly the Prophet's relations with his contemporary rulers with reference to the original sources and his study contributed to give a good understanding of rationale of his relations with different rulers and tribal chiefs. Moreover, he brought out several reasons for the importance to the study of *Sirah* of the Prophet (SAW) for Muslims and non-Muslims in the present days when modern sciences had made unimaginable progress.

As far as Islamic law is concerned, Dr. Muhammad Hamidullah was well-versed in this subject and showed keen interest in spreading this knowledge to the Muslim world through his lectures and writings. Dr. Hamidullah's works on Islamic law has also distinction from the point of view that his studies with reference to original sources help to dispel the doubts created by the orientalist and other writers about different aspects of Islamic law. Through his research work, he impressed on the western scholars to understand the importance and originality of Islamic law and

to give up the false claim that it had borrowed many points from Roman law. In fact his discussion has placed the Islamic law on the higher pedestal.

His contribution as a scholar of Islamic law had been remarkable. A part from translating the works on Islamic law in Urdu from different languages, he himself produced many important works on this subject. In these works he thoroughly discussed different aspects of Islamic law and provided guidance to the Muslims in the new situations of the present day world. The works give *Shari'at's* attitude towards many new aspects of social, economic and political life such as *Imâmat* of woman, marriage of Siamese twin sisters, woman in army, legal profession in view of Islamic law, imposition of additional taxes, insurance, system of governance, scope of *Khilâfat* in modern times etc.

He also examined the sources of *Fiqh* and methodology for bringing out legal points through them. His discussion about the importance and scope of *Ijتهاد*, principles of its application and contribution of early jurists to the development of this institution has great significance. It is noteworthy that while responding to the problems of modern period, he himself applied the mechanism of *Ijتهاد*. His emphasis on the institutional *Ijتهاد* was a revolutionary step in this direction. His contribution to *Fiqh* and Islamic law also included

discovering and compiling the important documents of the Prophet's time which contain basic rules and regulations of Islam for the conduct of relationship with non-Muslims.

A very important work of learned scholar about Islamic law is related to International law particularly his study of the rules and regulations of *Shari'ah* which governed relationship of Muslim state with non-Muslim subjects and countries. He is considered the first Muslim scholar who contributed to this important subject in English in a very systematic and detailed way. His works on Islamic international law are significant in several respects. Firstly, they bring to forth important aspects of Islamic international law that hitherto had been almost unknown both in the Islamic countries and the West. Second, his studies dispel the misgiving that Islamic law recognises only one category of relationship between the Islamic state and other states, that of war and belligerency. Thirdly, they examine the development of the concept of neutrality in Islamic international law. Fourthly, these works bring to forth the legal concept and practices of Islamic international law according to the requirements of modern world. Moreover, Dr. Hamidullah did his best in drawing attention of the scholar of the whole world to the Charter of Madinah as "the first written constitution of the

world”, which contained very rich material about the international relations in Islam.

The present work is an attempt to bring forth the significant achievements of Dr. Muhammad Hamidullah in the field of Islamic law. The whole study has been covered up among seven Chapters which are as follows.

1. Dr. Muhammad Hamidullah: His Family Background and Personality
2. Dr. Hamidullah’s works on *Qur’ân, Hadîth* and *Sîrah*- A General Survey
3. Critical Study of Dr. Muhammad Hamidullah’s Works on Islamic Law
4. Dr. Muhammad Hamidullah’s views on Islamic Law
5. Dr. Muhammad Hamidullah’s Perception of *Ijtehâd*.
6. Dr. Muhammad Hamidullah’s Juridical Response to the Problems of Modern Period
7. Dr. Muhammad Hamidullah’s Studies on Islamic International Law.

The first Chapter (Dr. Muhammad Hamidullah: His Family background and Personality) is divided into three sections. The first section gives details about the ancestors of Dr. Hamidullah with his

genealogical table. The second section deals with his early life, education, taking into account those distinguished teachers who helped to build up his personality as a scholar and thinker. The third section discusses his academic life as a teacher, writer and promoter of Islamic learning. The work concluded that Dr. Muhammad Hamidullah was born in such family of Islamic scholars whose thoughts influenced him for developing his intellectual ability. Dr. Hamidullah has endowed his own life for the propagating the teaching of Islam. While delving into his life, it seems as if he spends his whole life according to some certain set-frame. Initially, Dr. Hamidullah spends all his life vigor to gain knowledge and crossed each stage to conquer every front of Islamic knowledge. Later on, when his intellectual capacity developed in a concretized way and got access of the knowledge of Islamic studies, he superseded all his contemporaries in writing and delivering the lectures on the *Qur'ân*, *Hadîth*, *Fiqh*, Islamic history and international relation of Islam.

The second Chapter is related to the study of Dr. Hamidullah's works on *Qur'ân*, *Hadîth* and *Sîrah* literature. This Chapter evaluates his works on the above subjects giving a brief account of the contents of each work. The third Chapter (Critical Study of Dr. Muhammad Hamidullah's Works on Islamic law) contains a detailed study of Dr. Hamidullah's works on Islamic law with critical approach. The forth Chapter examines

the views of Dr. Hamidullah on definition, concept, philosophy and distinctive features of Islamic law gives his stand point about legislation and amendment in the Islamic law and influence of Roman law on Islamic law. Dr. Hamidullah's perception of *Ijtehâd* and his views about scope, principles of *Ijtehâd* and mechanism of institutional *Ijtehâd* in modern period has been discussed thoroughly in fifth Chapter. In this Chapter, the work also pointed out important issues which had been discussed by Dr. Hamidullah in a short way.

The sixth Chapter (Dr. Muhammad Hamidullah's Juridical Response to the Problem of Modern Period) gives a critical analysis of Dr. Hamidullah's juridical views about socio-economic and political problems of modern period. While presenting his solution to the new problems, Dr. Hamidullah applied the principle of *Ijtehad* to bring out the *Shari'ah's* attitude toward them. The work also observed that Dr. Muhammad Hamidullah had extensive knowledge of *fiqh* and *Usûl al-Fiqh*, and he was competent for *Ijtehâd*. He expressed his views over different aspects of *fiqh* and whatever he said, authenticated it with evidences. It has been proved that apart from *Qur'ân*, *Hadîth* he also had extensive knowledge of *Sîrah*, Islamic history and *fiqh*. He remained fully aware of the contemporary problems. Besides, his suggestions are also well worth.

The seventh and the last Chapter of the thesis evaluates Dr. Muhammad Hamidullah's contribution to Islamic International law. The Chapter contains detailed study of Dr. Hamidullah's Urdu and English works on this important subject of Islamic law mainly with reference to three conditions – peace, hostility and neutrality. The work also presents principles of Islamic international law on different aspects of peace, war and neutrality, given by Dr. Muhammad Hamidullah. In the concept of peace, he dwelt at length the principles of sovereignty, independence, jurisdiction and diplomatic relations. In war, he brought to forth the laws of commencement of war, kinds of war, declaration of war, prisoners of war international treaties, termination of war and its effects. The learned scholar has discussed the concept of neutrality in the light of *Qur'ân*, *Hadith* and historical facts and has examined the principles under which the neutral behaviour can be accepted.

CHAIRMAN



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Dated 21/07/2009.

CERTIFICATE

*This is to certify that the Ph.D. thesis entitled
"A Study of Mohammad Hamidullah's Works on
Islamic law" is an original work done by Mr. Sajid Ali
under my Supervision. The thesis is fit for submission for
the award of Ph.D. in Islamic Studies.*

Zafarul Islam
(Prof Zafarul Islam)
Chairman

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(My Lord! Bestow on them Thy Mercy even as they cherished me in childhood)

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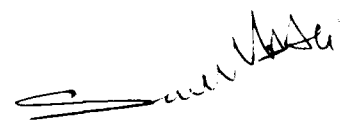

(Sajid Ali)

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Introduction

THESIS

Introduction

Dr. Muhammad Hamidullah (1908 A.D. – 2002A.D.) is one of those eminent scholars of the Indo-Pak subcontinent who left great impact on the Muslim world through their significant contribution to the fundamental sciences of Islam and sincere services to the society at large. Although, he belonged to Hyderabad (A.P., India) but he passed major parts of his life in Paris occupying himself with delivering lectures and writing books on the important aspects of Islamic sciences (*Qur'ân*, *Hadīth* and *Fiqh*). It goes to his credit that he had command on different well-known languages of the world including Arabic, Persian, Urdu, English, French and was also well-familiar with Turkish, Russian, Latin and German languages.

Dr. Hamidullah was a prolific author. His imposing life in the field of writing was characteristically distinguished from other personalities. His life devoted to religious and academic works inspired many scholars for serving the cause of Islam and contributing to Islamic learning in modern times. It is also surprising enough for every scholar who observes the circumstances in which Dr. Muhammad Hamidullah lived on the one hand and the large number of valuable works produced by him about different subjects on the other hand with high academic standard. His personality as a writer is compared with Abu Nasr al-Farabi (d. 950 A.D.), Abu Hamid al-Ghazali (d. 1111 A.D.) and Shah Waliullah Dehlawi (d. 1762 A.D.). While discussing different issues and examining others' studies, he adopted a critical approach towards them. He has

almost covered the whole range of Islamic studies in his writings and tried to explore true picture of Islam and its fundamental sciences. Although, the dimensions of his works spread over all these spheres- theology, the *Qur'ân*, *Hadîth*, *Fiqh*, Islamic history and culture, ethics, politics, economics but *Qur'ân*, *Hadîth*, *Fiqh* and *Sîrah* were his favourite subjects. His contributions to these subjects had been quite remarkable and were universally recognized in academic circle from the point of richness of material and high standard of research.

In the field of Quranic studies, his contributions are mainly, translations the Holy *Qur'ân* into three languages of West i.e. French, English and German, edition and publication of *Mushaf-e-Uthmânî* and collection and compilation of the bibliography of translations of the Holy *Qur'ân* in 125 different languages of the world. Dr. Hamidullah's contribution to *Hadîth* literature is also much significance. He did his best to establish the authenticity and historicity of *Hadîth* literature with strong evidences and convincing arguments. In the field of *Hadîth* Dr. Hamidullah showed main interest in the study of history of its compilation and in the discovery of the earliest collections of *Hadîth*. He was successful in this venture as he discovered some very early collection of *Ahâdîth* including *Sahîfah Hamâm Ibn Munabbih*. On the basis of these collections he removed the misgiving spread by orientalist and also by some unknowing Muslim scholars under their influence that in the early period the *Ahâdîth* were transmitted only orally and there was no system of preserving them in written form. So, the *Ahâdîth* can not be considered accurate and

reliable. He brought out impressive evidences to show that apart from a number of companions who had prepared their own personal collections of *Ahâdîth*, a large number of *Ahâdîth* had been dictated by Prophet Muhammad (SAW). Another contribution of learned author was collection and compilation of *Kitâb al- Sard*, one of the earliest collections of *Hadîth*.

In the field of Islamic history his works are mainly related to the *Sîrah* of Prophet Muhammad (SAW) in French, English and Urdu. The significant contribution of Dr. Hamidullah to *Sîrah* is that he has written on such aspects of *Sîrah* which were not touched by other scholars or were dealt with in marginal manner like judicial system in the time of Prophet (SAW), political life of the Prophet, state administration, diplomatic relation and educational system in the period of the Prophet (SAW). With regard to the *Sîrah* another significant contribution was collection and compilation of the documents of the times of the Prophet (SAW) which included the text of his letters and that of his agreements with the people of Makkah and different tribes of Madinah and adjoining areas. He also discussed the role of different tribes in the development of the Prophet's mission, which helps to understand the background and rationale of many decisions taken by the Prophet (SAW) particularly in relation to his agreement with different tribes. Dr. Hamidullah also studied thoroughly the Prophet's relations with his contemporary rulers with reference to the original sources and his study contributed to give a good understanding of rationale of his relations with different rulers and tribal chiefs.. Moreover, he brought out several reasons for the importance to the

study of *Sīrah* of the Prophet (SAW) for Muslims and non-Muslims in the present days when modern sciences had made unimaginable progress.

As far as Islamic law is concerned, Dr. Muhammad Hamidullah was well-versed in this subject and showed keen interest in spreading this knowledge to the Muslim world through his lectures and writing. His contribution as a scholar of Islamic law had been remarkable. Apart from translating the works on Islamic law in Urdu from different languages, he himself produced many important works on this subject. In these works he thoroughly discussed different aspects of Islamic law and interpreted the provisions of *Shari'ah* keeping in view the demands of modern times and problems of the present days. He also examined the sources of *Fiqh* and methodology for bringing out legal points through them. His discussion about the importance and scope of *Ijتهاد*, principles of its application and contribution of early jurists to the development of this institution has great significance. It is noteworthy that while responding to the problems of modern period, he himself applied the mechanism of *Ijتهاد*. His emphasis on the institutional *Ijتهاد* was a revolutionary step in this direction. His contribution to *Fiqh* and Islamic law also included discovering and compiling the important documents of the Prophet's time which contain basic rules and regulations of Islam for the conduct of relationship with non-Muslims.

A very important work of learned scholar about Islamic law is related to International law particularly his study of the rules and regulations of *Shari'ah*

which governed relationship of Muslim state with non-Muslim subjects and countries. He is considered the first Muslim scholar who contributed to this important subject in English in a very systematic and detailed way. His works on Islamic international law are significant in several respects. Firstly, they bring to fore important aspects of Islamic international law that hitherto had been almost unknown both in the Islamic countries and the West. Second, his studies dispel the misgiving that Islamic law recognises only one category of relationship between the Islamic state and other states, that of war and belligerency. Thirdly, they examine the development of the concept of neutrality in Islamic international law. Fourthly, these works bring to fore the legal concept and practices of Islamic international law according to the requirements of modern world. Moreover, Dr. Hamidullah did his best in drawing attention of the scholar of the whole world to the Charter of Madinah as “the first written constitution of the world”, which contained very rich material about the international relations in Islam.

In view of the significant contributions of Dr. Muhammad Hamidullah to Islamic law, I selected the present topic for my Ph.D thesis. To the best of my knowledge, no research work has been done so far on this particular aspect of his academic contribution. Several works of modern scholars about Dr. Hamidullah’s academic contributions are available in Arabic, Urdu, English and other languages. But these works do not contain detailed study of Dr. Muhammad Hamidullah’s contribution to Islamic law. So, to fill up this gap I attempted in the present thesis to study and evaluate his works on Islamic law

and bring out their distinctive features in an objective way. I feel that the work would be useful for the assessment of Dr. Hamidullah's contribution to Islamic law.

The main objectives of the present research work are:

1. To evaluate Dr. Muhammad Hamidullah's achievements in Islamic studies especially Islamic law.
2. To examine Dr. Muhammad Hamidullah's studies on different aspects of Islamic law particularly nature and characteristics of Islamic law, sources and principles of Islamic jurisprudence. concept of *Ijتهاد* and its scope in modern period.
3. To highlight his studies on International law of Islam.
4. To critically analyse the juridical views of Dr. Hamidullah about the problems of modern period.

Apart from the introduction and conclusion, the whole work is divided into seven chapters. These are as follows:

1. Dr. Muhammad Hamidullah: His Family Background and Personality
2. Dr. Hamidullah's works on *Qur'ân*, *Hadith* and *Sirah*- A General Survey
3. Critical Study of Dr. Muhammad Hamidullah's Works on Islamic Law
4. Dr. Muhammad Hamidullah's views on Islamic Law

5. Dr. Muhammad Hamidullah's Perceptions of *Ijtehâd*.
6. Dr. Muhammad Hamidullah's Juridical Response to the Problems of Modern Period
7. Dr. Muhammad Hamidullah's Studies on Islamic International Law.

The first chapter (Dr. Muhammad Hamidullah: His Family background and Personality) is divided into three sections. The first section gives details about the ancestors of Dr. Hamidullah with his genealogical table. The second section deals with his early life, education, taking into account those distinguished teachers who helped to build up his personality as a scholar and thinker. The third section discusses his academic life as a teacher, writer and promoter of Islamic learning.

The second chapter is related to the study of Dr. Hamidullah's works on *Qur'ân*, *Hadîth* and *Sîrah* literature. This chapter evaluates his works on the above subjects giving a brief account of the contents of each work. The third chapter (Critical Study of Dr. Muhammad Hamidullah's Works on Islamic law) contains a detailed study of Dr. Hamidullah's works on Islamic law with critical approach. The fourth Chapter examines the views of Dr. Hamidullah on definition, concept, philosophy and distinctive features of Islamic law gives his stand point about legislation and amendment in the Islamic law and influence of Roman law on Islamic law. Dr. Hamidullah's perception of *Ijtehâd* and his views about scope, principles of *Ijtehâd* and mechanism of institutional *Ijtehâd* in modern period has been discussed thoroughly in fifth Chapter.

The sixth chapter (Dr. Muhammad Hamidullah's Juridical Response to the Problem of Modern Period) gives a critical analysis of Dr. Hamidullah's juridical views about socio-economic and political problems of modern period. While presenting his solution to the new problems, Dr. Hamidullah applied the principle of *Ijtihad* to bring out the *Shari'ah's* attitude toward them. The seventh and the last chapter of the thesis evaluates Dr. Muhammad Hamidullah's contribution to Islamic International law. The chapter contains detailed study of Dr. Hamidullah's Urdu and English works on this important subject of Islamic law mainly with reference to three conditions – peace, hostility and neutrality.

In course of preparation of the present thesis I mainly studied the works of Dr. Hamidullah on Islamic law. The well-known books of modern scholars on Dr. Hamidullah were also consulted. I collected material for the present thesis from a large number of books, reference works, journals and periodicals available in the well-known libraries of Aligarh and Hyderabad including library of the Institute of Islamic Studies, AMU, Maulana Azad library, AMU, library of *Idârah Tahqîq wa Tasnîf-e-Islâmî* (Aligarh), library of *Idârah 'Ulûm al-Qur'ân* (Aligarh), Osmania University library (Hyderabad), Sayyed Salar Jang Museum library (Hyderabad), library of *Jâmi'ah Nizâmiyah*, (Hyderabad), library of Urdu Research Centre (Hyderabad), library of *Idârah Adabiyat-e-Urdu* (Hyderabad).

I have also attempted to collect relevant information through interview with a number of scholars and researchers of Aligarh and other places. These included Prof. Muhammad Yasin Mazhar Siddiqi (Department of Islamic Studies, AMU), Prof. Muhammad Saud Alam Qasmi (Dean, Faculty of Theology, AMU), Prof. A.R. Momin (Department of Sociology, University of Bombay), Dr. Shahid Ali Abbasi (Department of Islamic Studies, Osmania University, Hyderabad), Dr. Hasanuddin Ahmad (Chairman, Minority Commission of A.P., Hyderabad), Mr. Ahmad Ataullah (nephew of Dr. Muhammad Hamidullah, Hyderabad), Prof. Muhammad Mustafa Sharif (Chairman, Department of Arabic, Osmania University, Hyderabad), Maulana Abu Bakr al-Hashimi (Ex- Director, *Dâirat al-Ma'ârif-i-Uthmâniyah*, Osmania University, Hyderabad).

The present work is a humble attempt to bring forth the significant achievements of Dr. Hamidullah in the field of Islamic law. The work can not be claimed to be free from error. Under my limited ability I tried my best to consult the relevant works and present the thesis in a good form. It was only by the Grace and *tauffiq* of Allah Ta'âla that I was able to complete it.

Chapter - 1
Dr. Muhammad Hamidullah:
His Family Background and
Personality

Dr. Muhammad Hamidullah: His Family Background and Personality

1. Origin of His Family (*Nawâ'it*)

Dr. Muhammad Hamidullah belonged to a reputed family of the *Nawâ'it* tribe, which had distinction of producing many eminent scholars and learned personalities. The origin of *Nawâ'it* is traced back to Banu Hashim family, the famous branch of the Quraish tribe of the Arab. Qazi Badruddaulah, the grandfather of Dr. Muhammad Hamidullah had clearly stated that he belonged to Hashimi family. It was a tradition among the people of this family to use Hashimi and *Nawâ'itî* as their surname like Maulavi Nasiruddin Hashimi, Muhammad Ahmad Ibn Qazi Badruddaulah Hashimi and Maulavi Muhammad Ghauth Sharf al- Mulk *Nawâ'itî*.¹ Dr. Muhammad Hamidullah himself told his cousin Nadiyah Batul Ahmad, "We are related to Muhammad Rasulullah (SAW) and *Sahâbah* (R.A.)".²

This is evident from the authentic sources that the people of *Nawâ'it* tribe migrated from Madinah to Baghdad in 691 A.D. because of oppression by Hajjaj Ibn Yusuf who was the then governor of Hijaz in Umayyad dynasty. After spending a large part of their life in Baghdad, they moved to Basrah in 1341A.D.. It was their second migration and its main reason was tyranny of the ruler, Shiakh Hasan Ibn Husain (736-758 A.H. / 1336-1356 A.D.) who forced them to follow Shia sect. When chief of their tribe, Sayyed Abdur Rahman

Nawâ'itî died in 752 A.H. / 1351 A.D., they migrated from Basrah to India through sea-route and landed at Arcot, Bhatkal, Goa and Malabar.³ According to Dr. Muhammad Hamidullah the people of *Nawâ'it* tribe arrived in India around the same time (1333-48), when the famous traveller Ibn Battuta (1307-77 A.D.) has visited this country.⁴ At present, the families of *Nawâ'it* tribe are residing in different cities of India including Bhatkal, Konkan, Bijapur, Goa, Malabar, Delhi, Ahmad Nagar, Mumbai, Madras (Chennai), Arcot, Vellore and Hyderabad.⁵

It may be pertinent to explain here that *Nawâ'it*, etymologically, means new comers, is spelt variously as Nawayth, Nawayat, Navyath, Nawaiyat, Navyat, *Nawait* and Nevoyat. It was a migrant Muslim community, which had mainly settled in Tamil Nadu, Karnataka and Kerala.⁶ The *Nawâ'it* tribe is divided into many clans such as *Pâlkar*, *Chaudhrî*, *Khatîb*, *Dalwaî*, *Sabbâi*, *Saîd*, *Shakîr*, *Shakrî*, *Sabîr*, *Tahîr*, *Qârî*, *Quraishi*, *Qâzî*, *Mamûn*, *Mudarris*, *Malik* and *Makkî*.⁷ Dr. Muhammad Hamidullah himself belonged to the *Qâzî* clan. Many members of this clan had worked as *Qâzî* of Madras.⁸ Qazi Salahuddin Muhammad Ayyub, a descendent of Qazi Badruddaulah (d.1863 A.D.) was appointed the *Qâzî* of Madras in 1406 A.H./1985 A.D..⁹

Nawâ'itîs mostly belong to Shafii School of *Fiqh* but their few families also followed Hanafi School of jurisprudence, *Sunnat wal Jamâ'at* and Shia School of thought.¹⁰ For example, *Tâhir* clan is follower of Shia sect, which was converted to this sect at the hands of Shah Tahir Deccani (d. 1549 A.D.).¹¹ *Nawâ'itî* people were reported to be generally adherent to religious obligations

and it had been an old tradition among them to seek Islamic learning, memorize the Holy *Qur'ân* and seek the knowledge of Arabic and Persian. In a letter to one of his close relatives, Dr. Hamidullah observed “The family members should pay attention to seek Islamic learning, because all old scholars of the family are passing away one by one and there remains no one to take their places. May Allah Ta'âla bless you with His Mercy.”¹² They also observed the tradition of Bismillah through the religious head of the family at the starting point of education of every child, when he attained the age of four and half years. Then he was formally admitted to a *maktab* or *madrasah*. They were also very strict in maintaining their old family traditions and preserving their lineage. For the same reason they liked to have marriage within the people of their own tribe.¹³

2. Ancestors of Dr. Muhammad Hamidullah

Dr. Muhammad Hamidullah, as mentioned above, belonged to a reputed family of the *Nawâ'it* tribe, which was well known for its significant contribution to Islamic learning from the last part of 14th century A.D.. The family had produced many distinguished scholars, authors and *sûfis*. The ancestors of Dr. Muhammad Hamidullah included Makhdum Ali Ibn Ahmad Mahaimi¹⁴ (d. 835 A.H. /1431 A.D.), the eminent scholar of 14th century India and author of famous Arabic commentary of the *Qur'ân- Tabsîr al-Rahmân wa Taisîr al-Mannân*.¹⁵ The learned author was also known as a *sûfî* and was quite impressed by the mystic philosophy of Ibn Arabi (d. 638 A.H. /1240 A.D.).¹⁶

The genealogical table of Dr. Muhammad Hamidullah given by him is as follows.

Muhammad Hamidullah Ibn Muhammad Khalilullah Ibn Qazi Muhammad Sibghatullah Badruddaulah Ibn Muhammad Ghauth Sharf al-Mulk Ibn Nasiruddin Muhammad Ibn Qazi Nizamuddin Ahmad Saghir Ibn Qazi Husain Lutfullah Ibn Qazi Raziuddin Murtaza Ibn Qazi Mahmud Kabir Ibn Qazi Ahmad Ibn Faqih Abu Muhammad Ibn Faqih Muhammad Ismail Ibn Faqih Makhdum Ishaq Ibn Faqih Ata Ahmad Shafii.¹⁷

Ata Ahmad Shafii was the first amongst the ancestors of Dr. Muhammad Hamidullah, who had settled in India in 1351 A.D.. He migrated from Basrah to Goa and travelled widely to many cities of South India like Bijapur, Gulbarga, Arcot and Madras. At last, he settled at Kachchh (Gujarat), where he died and was buried at the same place.¹⁸ He had two sons Faqih Makhdum Ishaq and Faqih Makhdum Ismail (d. 879 A.H. / 1474 A.D.). Faqih Ismail had one son namely Abu Muhammad Qazi Ahmad, who had the distinction of being the first Qazi in his family. He had left two sons, Mulla Khalilullah and Qazi Mahmud Kabir. The first one was the grandfather of Habibullah Bijapuri (d.1041 A.H. /1631 A.D.), a famous *sufi* of Deccan and worked as *Qâzi* of Bijapur in the reign of Ali Adil Shah (d.988 A.H./1580 A.D.). Qazi Mahmud Kabir, from whom Dr. Muhammad Hamidullah descended, was a famous scholar of Arabic and Persian. He had compiled a Persian book entitled *Ta'liqât-e-Qâzi Mahmûd bar Mu'âmalât-e-Gûdâ*. He died on 7th Rabi al- Awwal 995 A.H./ 15 Feb. 1587 A.D. and was buried in the

ground of the Bijapur fort.¹⁹ Maulavi Muhammad Ghauth Sharf al-Mulk, the great grandfather of Dr. Muhammad Hamidullah, was born on 17th July 1752 A.D. in Arcot (Tamil Nadu). He (Muhammad Ghauth Sharf al-Mulk) got early education from his grandfather Nizamuddin Ahmad Saghir (d.1189 A.H. /1775 A.D.) and learned from him mainly *Qur'ân*, *Hadîth* and *Fiqh*. He also attended lectures of Aminuddin Ahmad Khan Bahadur (d.1195 A.H. /1781 A.D.) and Abdul Ali of Madras and became well-versed in Arabic language, traditional sciences, logic and philosophy.²⁰

During his stay in Madras, Maulavi Muhammad Ghauth Sharf al-Mulk had privilege of being the tutor of Azimullah, son of Nawab Amir al-Umara. After the death of his father Azimullah himself was declared as Nawab of Madras in 1804 A.D.. He paid great respect to his teacher and graced him with the title of *Sharf al-Mulk Sharfuddaulah Maulavî Muhammad Ghauth Khân Bahâdur Ghâlib Jang*. In 1808 A.D., he resigned from this post and devoted himself to the cause of Islamic learning. He has to his credit more than 30 books in Arabic, Persian and Urdu including *Nathr al-Marjân fî Rasm Nazm al-Qur'ân*, a voluminous Arabic commentary of the *Qur'ân*, which was first published in 1322 A.H. /1904 A.D. from Majlis Ishâ'at al-'Ulûm, Hyderabad. Muhammad Ghauth died on 11th Safar, 1238 A.H. /7th Nov 1822 A.D. and was buried near the mosque of *Wâlâjâhî* of Madras.²¹

Maulavi Muhammad Ghauth Sharf al-Mulk had left two sons, Abdul Wahhab (d 1258 A.H. / 1842 A.D.) and Muhammad Sibghatullah Qazi Badruddaulah, the grandfather of Dr. Muhammad Hamidullah. He was well

acquainted with traditional as well as rational sciences including astronomy, philosophy and medicine.²² In addition to his academic works, Qazi Badruddaulah made great contribution as a religious and social reformer and worked hard for eradication of innovations that had prevailed in those days society.²³ In 1851 A.D., he was appointed as the chairman of the Board of Directors of *Madrasah-e-‘Azam* (Madras). But when Edward Balfour, the then Director of National Library of Madras, wanted to introduce English, local languages and subjects of science in the courses of studies, he opposed it and later submitted his resignation. He was of the opinion that the inclusion of these subjects in the curriculum of the *madrasah* would affect the traditional education.²⁴

In 1747 A.D., he was appointed by Nawab Ghulam Ghauth Khan Bahadur as *Qâzi al-Quzâh* of Madras, which was the highest post in judicial administration. Subsequently, he was awarded the titles of *Qâzi al-Mulk*, *Munsifuddaulah*, *Ma‘dalat Khan Bahâdur*, *Musta‘id Jang*, *Khâdim-e-Shar‘ Shari‘at-e-Rasûlullah (SAW)*.²⁵ Qazi Sibghatullah was author of more than sixty books in Arabic, Persian and Urdu, which were related to different aspects of Islamic learning. The most important of them was *Faiz al-Karîm*, the Urdu commentary of the Holy *Qur‘ân*.²⁶ He died in 1863 A.D. and was buried in the compound of the *Wâlâjâhî* mosque of Madras.²⁷

Abu Muhammad Khalilullah (d. 1363 A.D. /1944 A.D.), father of Dr. Muhammad Hamidullah was a well-known personality of Hyderabad. After completing his education, he worked as assistant revenue secretary of

Aurangabad. Later on, he was appointed as secretary of revenue department of Hyderabad in the *Nizam* state. He also showed interest in the work of public welfare and had established a non-interest financial institution in Hyderabad with the main objective of protecting Muslims from the curse of interest. In addition to these works, he was the author of several books including *Guldasta-i-Ma'rifat*, *Tuhfat al-Khullân fî Masâ'il al-Islâm wal-Imân*, *Tuhfat al-Atfâl*, *Rehnumâ-e-Tarbiyat* and *'Azîz al-'Urf*.²⁸ Abu Muhammad Khalilullah was married with Bibi Sultan, the daughter of Nawab Qasim Jang of Karnataka. He had three sons (Muhammad Sibghatullah, Muhammad Habibullah and Dr. Muhammad Hamidullah) and five daughters (Amat al-Aziz, Habibat al-Rahman, Bibi Asma, Amat al-Samad, Amat al-Wahhab). Abu Muhammad Khalilullah took great care of their educational upbringing.²⁹

Muhammad Sibghatullah, the eldest brother of Dr. Muhammad Hamidullah had worked as Deputy-Director of the revenue department in the *Nizam* state of Hyderabad and had taken keen interest in the statistical survey. He had also established a non-interest banking society to provide interest free loan to the employees of the revenue department.³⁰ Muhammad Habibullah, second brother of Dr. Muhammad Hamidullah, is mainly known for translation of many important Arabic books into Urdu. *Sahîfah Hamâm Ibn Munabbih*, one of the earliest *Hadîth* collections, was edited by Dr. Muhammad Hamidullah. Muhammad Habibullah rendered it into Urdu. He also compiled a commentary of Holy *Qur'ân* in Urdu known as *Tafsîr-e-Habîbî*, which is available in manuscript form.³¹

3. Early Life and Education

Dr. Muhammad Hamidullah was youngest son of Abu Muhammad Khalilullah. He was born on 16th Muharram 1326 A.H. /19 Feb. 1908 A.D.³² in Katal Mandi,³³ a place in Hyderabad.³⁴ His father took great care of the education of his children and their religious training (*tarbiyat*). Dr. Muhammad Hamidullah got elementary education through his father and other elders of his family.³⁵ From primary to higher level, he was very sincere in his studies and quite punctual in attending classes. He worked hard for development of his knowledge in different subjects. He was divinely gifted with strong memory, which had been quite helpful in his studies. He had himself stated that he had memorized some verses of Holy *Qur'ân* just at the age of four and half years, when he was learning recitation of the Holy *Qur'ân* through his father.³⁶

For the second stage of the traditional education, Dr. Muhammad Hamidullah was formally admitted to *Dâr al-'Ulûm*, the famous *madrasah* of Hyderabad in 1913 A.D.. He studied there up to six classes and for higher education he joined *Jâmi'ah Nizâmiyah* (Hyderabad) in 1919. He studied there mainly *Qur'ân*, *Hadîth*, *Fiqh*, *Kalam* (scholasticism), logic and philosophy and completed the courses of *Maulavi* and *Kamil* in 1923 and 1924 respectively with specialization in *fiqh* and *usûl al-fiqh*.³⁷

The main teachers of Dr. Muhammad Hamidullah in *Jâmi'ah Nizâmiyah* were.³⁸

1. Maulana Abul Wafâ al-Afghani, a well-known scholar of *Hadîth* and *Fiqh*
2. Mufti Maulana Sayyed Abul Fazal Makhdum al-Hashimi

3. Maulana Sayyed Shah Muhammad
4. Maulana Makhdum Beg Hashimi
5. Maulana Mir Roshan Ali
6. Maulana Bashiruddin
7. Maulana Mir Shabbir Ali
8. Mufti Sayyed Mahmud
9. Maulana Sayyed Sibghatullah
10. Maulana Muhammad Saïduddin Ansari
11. Maulana Sayyed Mustafa Qadri
12. Maulana Shaikh Muhammad Qasim
13. Maulana Riyazuddin Ahmad

In *Jâmi'ah Nizâmiyah*, Dr. Muhammad Hamidullah studied the following books.³⁹

Tajwîd: Al-Muqaddamah al-Juzariyah by Muhammad Ibn al-Juzari (d. 833A.H. /1429 A.D.)

Sarf wa Nahw: Sarf-e-Mîr by Mîr Sayyed Sharif al-Jurjani (d. 816A.H. /1413 A.D.), *Fusûl-e-Akbari* by Shaikh Ali Akbar Ali Ilahabadi and *Panch Ganj* by Mukhtar Ali Ibn Muhammad Ali.

Hadîth: Mishkât al-Masâbih by Waliuddin Muhammad Ibn Abdullah al-Khatib al-Tabrizi (d. 737A.H./1336 A.D.)

Fiqh: Mukhtasar al-Quddûrî by Imam Abul Hasan Ibn Muhammad Ibn Jafar al-Quduri al-Baghdadi (d. 428 A.H. /1036 A.D.) and *Farâ'iz al-*

Sirâjīyah by Sirajuddin Muhammad Ibn Muhammad Abdul Rashid al-Sajawandi.

Usûl al-Fiqh (Principles of Jurisprudence): *Usûl al-Shashi* by Abu Bakr Muhammad Ibn Ahmad Ibn Husain (d. 507 A.H. /1114 A.D.)

Kalâm (Scholasticism): *Al-Fiqh al-Akbar* by Abu Hanifah Numan Ibn Thabit (d. 105 A.H. / 723 A.D.), *Al-Kafiyah* by Jamaluddin Ibn Hajib (d. 646 A.H. /1248 A.D.) and *Sharh Mâ'at-e-'Amil* by Shaikh Isa Burhanpuri.

Adab: Nafhat al-Yaman by Ahmad Ibn Muhammad Ibn Ibrahim al-Sherwani. *Sullam al-Adab* by Karimuddin and *Akhlâq-e-Mohsinî* by Husain Ibn Ali al-Waiz.

Mantiq: Sharh al-Tahzîb by Obaidullad Husain Yazidi (d. 1015 A.H. / 1606 A.D.) and *Al-Mirqât* by Fazal Imam Ibn Muhammad Arshad Khairabadi (d. 1240 A.H. /1824 A.D.).

History: *Târîkh al- Khulafah* by Jalaluddin Suyuti (d. 911 A.H. /1505 A.D.) and *Târîkh al-Hind* by Abdul Karim.

Geography: *World Geography* by Sayyed Abdul Fatah and *Deccan Geography* by Abdur Rahim Khan.

Besides, Dr. Muhammad Hamidullah studied some other books relating to mathematics, science and grammar of Arabic, Persian and Urdu languages. As matter of fact, his quest for knowledge was not confined to only traditional education as he also developed interest in modern education, which was becoming popular in those days' India. Subsequently, he passed matriculation examination from Osmania Board in 1923.⁴⁰ Later on, he completed M.A. in theology and L.L.B. with specialization in International law from Osmania

University (Hyderabad) in 1930 A.D..⁴¹ After that he joined *Idârah Tahqîqât-e-Ilmiyah*, (the Research Institute of Osmania University) as Research Associate. For his research work, he was assigned a very important topic *Islamic and European International Law- A Comparative Study* and was awarded research fellowship by the Osmania University to collect material from Muslim and European countries. While pursuing his research work in Istanbul, Dr. Muhammad Hamidullah was invited by Prof. Salim Fritz Krenkow of Oriental Seminar Bonn University (German) to present his research work in Bonn University. After getting permission from Osmania University, he submitted his research work in Bonn University and was awarded D.Phil. degree in 1933 A.D..⁴² His D.Phil thesis, entitled *Die Neutralitat im Islamischen Volkerrecht* (Neutrality in Islamic International Law), first appeared in the well-known German Journal, *Zeitschrift Der Deutschen Morgenlandischess Gesellschaft* (ZDMG) in 1935.⁴³ After revision and addition of some material, the work was later published in the book form under the title of *Muslim Conduct of State* and came to be recognized as the first valuable work on the subject. He continued his research work and joined Sorbonne University (Paris) in 1934 A.D. for the post doctoral work on *Documents Sur La Diplomatie Musulmane a L'e'poque Du Prophete et Des Othodox Khalifas* (Documents on Muslim Diplomacy in the time of the Prophet and Orthodox Caliphs). He was awarded D.Litt. degree on this work in 1935 A.D. and this post doctoral work was published under the same title from Paris in 1935.⁴⁴ He further wanted to complete a third doctoral work from

Leningrad University (Russia) but this could not be materialized as he returned Hyderabad in 1936 A.D..⁴⁵

4. Academic Life:

In practical life, Dr. Muhammad Hamidullah started his career in 1933 A.D. as lecturer of Arabic and Urdu in Bonn University (German).⁴⁶ On returning Hyderabad in 1936 A.D., he joined the Department of Theology (Osmania University) as a lecturer. After sometimes, he was transferred to the Department of Law of the same university as lecturer of International law. While working as lecturer, he continued his research work and made significant contribution to different aspects of Islamic studies particularly Islamic Jurisprudence. In fact, he rendered great service to Islam and Muslims as a researcher and author. After about ten years, his career at Osmania University abruptly came to end due to the disturbed situation in Hyderabad. In 1946, he was selected a member of the delegation sent by the *Nizam* of Hyderabad to the United Nation Security Council to make efforts for the prevention of forcible annexation of the Hyderabad state to the Indian dominion. While the delegation was pursuing the matter, the state of Hyderabad fell to Indian government in September 1948.⁴⁷ In the changed situation, Dr. Muhammad Hamidullah did not like to return to his homeland. Instead, he preferred to live in exile in Europe. He stayed in France as refugee and remained occupied with research work, writing articles and books and delivering lectures on important aspects of *Qur'ân, Hadith, Fiqh, Sirah* and Islamic history.⁴⁸

In 1948, he founded the Hyderabad Liberation Society to get Hyderabad recognized as an independent state. He decided to remain as stateless person as long as the question of Hyderabad was under consideration in UNO. But it appeared that the question could not be resolved favourably. So he chose to reside in Paris simply as refugee. In 1949, Dr. Muhammad Hamidullah was invited by the government of Pakistan to draft the first constitution of the Islamic government. Meanwhile, the Board of *Ta'limât-e-Islâmiyah* (1949-50) was constituted in Islamabad and he was selected a member of the Board along-with the following eminent scholars.⁴⁹

1. Maulana Sayyed Sulaiman Nadvi (Chairman)
2. Maulana Mufti Muhammad Shafi
3. Prof. Muhammad Abdul Khaliq
4. Mufti Muhammad Jafar Husain Mujtahid
5. Muhammad Zafar Ahmad Ansari

The Board had nothing to do with Islamic or Muslim education. It was required only to give advice on the constitutional matter to the Pakistan government.

In France, he joined the famous research centre, Centre Nationale De La Recherche Scientifique (CNRSF) and worked there for a long time. During his stay in France, he contributed many research papers to the reputed English, French and Urdu journals. In the same period he also produced a number of scholarly works about *Qur'ân, Hadîth, Sîrah* and *Fiqh*.⁵⁰ It was also an important part of his academic activity to participate in seminars and

conferences. Apart from contributing learned papers, he took part in discussion and deliberation and impressed participants especially orientalist by his research-oriented papers and satisfactory answers to the questions raised by them.⁵¹

His academic contribution included lectures on important aspects of Islam, Islamic history and culture, delivered in different universities of India, Pakistan, Turkey, Paris and the Arab world. This also showed his world wide fame and reputation as a researcher and scholar. In 1935, he delivered a lecture on history of Islamic economics in Sorbonne University (Paris).⁵² In this lecture, he had convincingly proved that the economic federation had its origin in the early Islamic period. In 1940, he was invited by the Madras University to deliver a lecture on International law.⁵³ From 1954 onward, it had become a regular feature of Dr. Muhammad Hamidullah's academic life to visit Turkey every year during summer and deliver lectures in different universities especially that of Istanbul, Ankara and Erzurum. In Turkey, he was invited by Dr. Zaki Velidi Togan (d.1970 A.D.), the then Director of Islamic Research Institute, University of Istanbul, to deliver lectures on Islam, Islamic history and culture. His lectures programme continued for a long time even after the death of Dr. Zaki Validi Togan. His lectures became quite popular and were attended by some of the eminent scholars who felt privileged by attending his lectures and were highly inspired by them. They included Dr. Ekmeleddin Ihsonoglu, Director General, Research Centre for Islamic History, Art and

Culture (Istanbul) and Professor Salih Tug, Former Dean, Faculty of Theology, Merama University.⁵⁴

In 1980 A.D., he was invited by the Islamiyah University of Bahawalpur (Pakistan) to deliver lectures on *Qur'ân, Hadîth, Fiqh*, Islamic history and International law of Islam. He delivered twelve lectures during 8th March - 20th March 1980 A.D. without any piece of paper before him. But it is remarkable that these were well documented with frequent references to original sources. These lectures, published under the title of *Khutbât-e-Bahâwalpur*, showed his command over the subject and thorough study of original works about sources of *Shari'at*, international law, institutions and history of Islam. His detailed responses to the questions of the participants appended at the end of each lecture have added to the value of the work, which became very much popular in the academic circle. Later, its English version entitled *The Emergence of Islam*, was published by the Islamic Research Institute (Islamabad) in 1985.⁵⁵

In 1985, Dr. Muhammad Hamidullah was honoured with International Hijrah award in recognition of his services to Islam and Islamic studies. The cause of research was so dear to him that he denoted the full amount of the award (one million rupees) to the Islamic Research Institute (Islamabad), a highly reputed centre of research and publication.⁵⁶

In the last part of his life, he remained almost bed-rest for about seven years. On 19th Jan 1996 A.D., he went to *Jâme'* Masjid of Paris for performance of prayer and fell on the ground of the mosque. Next day, he was admitted to Nanuz hospital of Paris. On check-up, a very serious disease

(Hypothermia Artrial, Tachory Thema Bi Ventiricala) was detected. In spite of treatment, his condition was deteriorated day by day. So, he was taken by his grand niece, Sadidah, to Florida (USA) for further treatment under her care. He resided there till he died on 17th December 2002 in Jacksonville, Florida (USA). His funeral prayer was led by Dr. Yusuf Zia Kavacki, Imam of Islamic Association of North Texas (USA) and eminent Turkish scholar. He was buried on 18th December, 2002, in the Muslim graveyard of Jacksonville, Florida (USA).⁵⁷

Dr. Muhammad Hamidullah passed his life as bachelor. His pedigree continued through his brothers- Muhammad Sibghatullah and Habibullah. The first one had left three sons namely, Ahmad Ataullah, Muhammad Saifullah and Muhammad Khalilullah. Muhammad Ataullah is a retired Engineer from the Indian Institute of Chemical Technology (Hyderabad) and has settled in Hyderabad. Ms. Sadida, at whose home Dr. Muhammad Hamidullah died, is daughter of Ahmad Ataullah and is settled in Jacksonville, Florida (USA). Muhammad Saifullah is advocate by Profession and doing practice in the Hyderabad High Court. Muhammad Khalilullah is working as Professor in Jawahar Lal Nehru Technology University, Hyderabad. Muhammad Obaidullah, the son of Muhammad Habibullah is the Director of *Madrasah Muhammadiyah*, Madras (Chennai).⁵⁸

5. Personal Life and Character

Dr. Muhammad Hamidullah was endowed with many God-gifted qualities including a strong memory. He, as stated earlier, had completed *hifz-*

e-Qur'ân at very early age and had also memorized a large number of *Ahadith*. He had fully in mind the exact location of the important books in his ancestors' library in Hyderabad. The most convincing proof of his strong memory was that he delivered 12 long lectures on important aspects of Islam, *'Ulûm-e-Islâmiyah* and *Sharî'at* in the University of Bahawalpur without any piece of paper before him and these lectures as has already been stated were well-documented and quite informative.⁵⁹

Dr. Muhammad Hamidullah was well-known for simplicity, modesty, honesty, sincerity, generosity, kindness and devotion to his work. He was of a very helping nature and was always ready to help needy and depressed persons. He daily received a large number of visitors at his house. In the same way, he kindly responded to the queries of students and researchers from the different countries. He was generous enough to send at his own expenses copies of the manuscripts or printed works to the students and researchers from different parts of the world. Moreover, he was kind and sympathetic towards widows, orphans and needy persons and helped them generously. For this purpose, he had personally maintained a list of such people along with their addresses and regularly extended financial help towards them. It is also important to note that sometimes he distributed the whole amount of the award among his relatives, friends and needy persons or gave to some academic institutions as has been already mentioned.⁶⁰ It may be also added here that Dr. Muhammad Hamidullah was a man of discipline in every sphere of his day-to-day life. He had fixed schedule for every work and accordingly he used to complete his

daily routine. As a matter of fact, his monumental academic works themselves speak of his disciplined life.

6. Academic Works:

The most striking feature of Dr. Muhammad Hamidullah's personality was his devotion to study and the untiring service to the cause of knowledge. He took great pain to visit different libraries and private collection in search of manuscripts and other material about *Qur'ân*, *Hadîth*, *Sîrah* and Islamic history. Dr. Muhammad Hamidullah, as stated above, remained busy throughout his life in different kinds of academic works- teaching, delivering lectures, editing the newly discovered manuscripts and writing articles and books on Islam, Islamic sciences (*'Ulûm-e-Islâmiyah*) and Islamic history. The most worthy contribution of the learned scholar was translation of Holy *Qur'ân* in French and other European languages including German and English. Other notable works included compilation of the bibliography of translations of the *Qur'ân* in 125 languages of the world and discovery of the copy of the *Qur'ân* prepared in the period of Hazrat Uthman (RA) (popularly known as *Mushaf-e-Uthmânî*) and its publication under his special care. Another significant work was collection and compilation of the written documents of the times of the Prophet Muhammad (SAW). The work, known as *Al-Wathâ'iq al-Siyâsiyah*, included letters of the Prophet (SAW) and text of his agreements with the people of Makkah and different tribes of Madinah and adjoining areas. It also goes to credit of Dr. Muhammad Hamidullah that for the first time he presented a systematic and detailed study of International law of Islam in English and

Urdu. Bringing forth many important aspects of Islamic Jurisprudence, the learned scholar dwelt at the length in his lectures and articles about *Ijtehâd*, stressed the need of application of its principles to solve the problems of modern period. Highlighting the scope of *Ijmâ'* of the learned Jurists of the whole world in this age of globalization. He made strong place for using it as mechanism for collective *Ijtehâd*.⁶¹

This is also a very valuable work of Dr. Muhammad Hamidullah that he discovered several rare Arabic manuscripts about *Qur'ân*, *Hadîth*, *Sîrah* and Islamic history, prepared their critical edition and took care of their publication. These works are as follows:

1. *Sahîfah Hamâm Ibn Munabbih* by Hamam Ibn Munabbih (d. 101A.H. /719 A.D.) published from Damascus in 1953 A.D.. Its Urdu and English translations were published from Hyderabad in 1955 and 1961 respectively.⁶²
2. *Kitâb al-Mubtadâ' wal Mab'ath wal Maghâzî* by Ibn Ishaq (d. 151 A.H. / 767 A.D.) published from Rabat (Morocco) in 1976 A.D.⁶³
3. *Ansâb al-Ashrâf* by Ahmad Ibn Yahya al Baladhuri (d. 892 A.H. / 1486 A.D.) published from Dar al-Ma'ârif (Cairo) in 1959.⁶⁴
4. *Kitab al-Riddah* by Umar al-Waqidi (d. 807 A.H./ 1404 A.D.), published from Damascus in 1964.⁶⁵
5. *Al-Zakhâ'ir wal-Tahaf* by Qazi Rashid Ibn Zubair (d.563 A.H. / 1167 A.D.) published from Kuwait in 1959.⁶⁶

6. *Ma'dan al-Jawâhir fî Târîkh al-Basrah wal-Jazâ'ir* by Shaikh Numan Ibn Muhammad published from Majma al-Buhus al-Islamiyah. Islamabad (Pakistan) in 1973.⁶⁷
7. *Kitâb al-Nabât* by Abu Hanifah al-Dinawari (d. 882A.H. / 1477A.D.) Published from Cairo (Egypt) in 1973. The English translation of the book (by Dr. Muhammad Hamidullah himself) was published from Bait al-Hikmat, Karachi (Pakistan) in 1411 A.H./ 1990 A.D..⁶⁸
8. *Kitâb al-Sard wal-Fard fî Sahâif al- Akhbâr* by Ismail al-Qazwini, the text together with English translation was published from Islamabad (Pakistan) in 1411A.H. / 1990 A.D..⁶⁹
9. *Kitab al-Mu'tamad fî Usûl al-Fiqh* by Imam Abul Husain al-Basri (d. 434 A.H. / 1042 A.D.) published from French Institute of Archaeology (Damascus) in 1964 A.D..⁷⁰

In addition to the above works, Dr. Muhammad Hamidullah translated al-Sarakhsi's celebrated work *Sharh al-Siyar al-Kabîr* in French. It was published from the Department of Religious Affairs (Ankara). He compared the French translation of *Jâme' al-Sahîh* of Imam Bukhari by Dr. Bucaille with the original Arabic text and indentified hundreds of errors in the translation. This work was published from Paris. He prepared a detailed and exhaustive index of Imam Bukhari's *Al-Sahîh* in Arabic and French.⁷¹ Moreover, on the request of some learned scholars, Dr. Muhammad Hamidullah had written introduction to their edited works such as *Sunan Saïd Ibn Mansûr*⁷² (edited by

the noted *muhaddith* Habibur Rahman al-Azami) and *Ahkâm Ahl al-Zimmah* of Ibn Qayyim jawziah⁷³ (edited by Dr. Sabib al-Salih).

A brief account of the important published works of Dr. Hamidullah, excluding edited ones, is given below:

1. *Le Saint Coran* (French) : - French translation of the Holy *Qur'ân* published for the first time from Club Francais Du Livre (France Club of Books), France, in 1959.⁷⁴
2. *Al-Qur'ân fi-Kull-e-Lisân* (Arabic): - It is a bibliography of the translations of the Holy *Qur'ân* in 125 languages of the world. Its first edition appeared in 1364 A.H. / 1945 A.D. from 'Âlamgîr Tahrîk (Hyderabad) and contains translations of 23 languages.⁷⁵
3. *Introduction to Islam* (English): - A brief but scholarly introduction to Islam and Islamic way of life along with a brief history of early Islamic period. Its first edition appeared in 1957 from Central Cultural Islamique (Paris).⁷⁶
4. *Muhammad Rasulullah* (English): - A concise and very popular work on *Sîrah*. It was first published from Hyderabad in 1974 and was later translated into different languages including Urdu, Turkish and Hindi.⁷⁷
5. *Majmû'ah al-Wathâ'iq al-Siyâsiyah* (Arabic): - Collection of the letters of the Prophet (SAW) and other official documents of the period of Muhammad (SAW). This is original and a very important source for the history of the Prophet's times, especially for the study of his relationship

with the followers of other religions. The work was first published from Matbâh Lajnnat al-Tâlîf wal-Tarjumah wal-Nashr (Cairo) in 1941.⁷⁸ It was translated into Urdu by Abu Yahya Khan Nawshahri and published under the title *Siyâsî Wathîqahjat Az 'Ahd-e- Nabawî tâ bah Khilâfat-e-Râshidah* from Lahore in 1960 A.D.⁷⁹

6. *Rasûl-e-Akram kî Siyâsî Zindagî* (Urdu): - A comprehensive study of the political life of the Prophet Muhammad (SAW) and Islamic principles of International relations with other subjects and countries. It was first published from Dâr al- Ishâ'at (Karachi) in 1950.⁸⁰
7. *Muslim Conduct of State* (English): - This is a very comprehensive study on International law of Islam in English and is based on original sources. The work was first published in 1941 from Lahore.⁸¹
8. *'Ahd-e-Nabawî men Nizâm-e-Hukmrânî* (Urdu): - A brief work on system of state administration in the Prophet's period. The work was first published from Maktabah Jâmi'yah (Delhi) in 1944.⁸²
9. *'Ahd-e-Nabawî ke Maidân-e-Jang* (Urdu): - A masterpiece of the research work about the battles of the Prophet's times. It gives minute details about the location of the battlefields, strategies of the battles and other related matters. It was first published in *Majmû'ah-e-'Ilmiyah*, the Journal of Osmania University (Hyderabad) in 1940. Later, it was printed in the book form from Intezâmiyah Press (Hyderabad) in 1945. The work became quite popular and was translated into English, French and Turkish languages.⁸³

10. *Qânûn-e-Bain al-Mumâlik ke Usûl aur Nazîren* (Urdu): - The book relating to the principles of the International relations was prepared keeping in view the requirements of L.L.B. students of Osmania University (Hyderabad). It was first published in 1355 A.H./ 1936 A.D.⁸⁴
11. *Le Prophete de l'islam Savie et Son Ocurve* (French): - This is a voluminous *Sîrah* work in French. It was first published in 1959 from Librairie Philosophique J.Vrin (Paris) in two volumes. The first volume was translated into English by Dr. Mahmud Ahmad Ghazi under the title of *The Life and Work of The Prophet of Islam* and was published in 1994 from the Islamic Research Institute (Islamabad).⁸⁵
12. *Khutbât-e-Bahâwalpur* (Urdu): - It is the collection of Dr. Muhammad Hamidullah's twelve lectures which he delivered at the Islamia University, Bahawalpur during 8th March to 20th March 1980 A.D.. It was published from the Islamia University Bahawalpur in 1981 A.D., and its English version by Afzal Iqbal was published under the title of *The Emergence of Islam* from Islamic Research Institute (Islamabad) in 1985, as stated earlier.⁸⁶

It is quite evident from the above account of the works of Dr. Muhammad Hamidullah that he contributed to the subjects of Islamic Studies in different languages including Arabic, English, French, Turkish and Urdu. The most striking feature of his work is that these are quite popular in the academic circle in the whole world. This is further evident from the fact that

many of them were translated into different languages and published from the reputed academic Institutions and publishing houses of the world like Damascus, Cairo, Kuwait, Rabat, Paris, Istanbul, Islamabad and Hyderabad. In addition to the above published works, Dr. Muhammad Hamidullah had also contributed numerous articles and research papers to the leading journals of the world. published in English, French and Urdu.

In concluding remark, we can say that Dr. Muhammad Hamidullah was born in the family of Islamic scholars. These scholars' thoughts influenced Dr. Muhammad Hamidullah for developing his intellectual ability. Dr. Hamidullah has endowed his own life for the propagating the teaching of Islam. While delving into his life, it seems as if he spends his whole life according to some certain set-frame. Initially, Dr. Hamidullah spends all his life vigor to gain knowledge and crossed each stage to conquer every front of Islamic knowledge. Later on, when his intellectual capacity developed in a concretized way and got access of the knowledge of Islamic studies, he superseded all his contemporaries in writing and delivering the lectures on the *Qur'ân*, *Hadîth*, *Fiqh*, Islamic history and international relation of Islam.

Notes and References

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2. Nadiyah Batul Ahmad, "Humble and Dignified", *Impact* (London), Vol. 33, Nos. 1, 2 & 3, Jan-March, 2003, p. 16.
3. Aziz Jang, *Târîkh al-Nawâ'it*, Vila Academy, Hyderabad, 1976, pp.47-57 ; Yusuf Kokan Umari, op.cit, pp. 24-25.
4. Nadiyah Batul Ahmad, op.cit.
5. Muhammad Rashid Shaikh (editor), *Dr. Muhammad Hamidullah*, al-Mizan Publishers, Faisalabad, 2003, p. 311; Aziz Jang, op.cit.. p. 55.
6. According to Thurston (The author of *Castes and Tribes of Southern India*), the name of *Nawâ'it* community is a corrupted form of Hindustani and Marathi words for newcomer. For more details see, N.K. Singh and A.M. Khan (editors), *The Encyclopedia of The world Muslims: Tribe, Castes and Communities*, Global Vision Publishing House, Delhi, 2002, Vol. 3, p. 116 ; Edger Thurston, *Castes and Tribes of Southern India*, Government Press, Madras, 1909, Vol. 5, p. 272 ; Yusuf Kokan Umari, op.cit., pp. 21-25.
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8. Muhammad Rashid Shaikh, op.cit.
9. Muhammad Obaidullah, "Dr. Muhammad Hamidullah ke Chand Maktûbât", *Ma'ârif* (Azamgarh), Vol. 172, No.4, Oct. 2003, p. 281.
10. Aziz Jang, op. cit., p. 56.

11. Shah Tahir Deccani (d. 1549 A.D.) got fame as a religious scholar and leader. His popularity as a teacher created suspicion in the mind of the Safavid ruler Shah Ismail, who exiled him to Kasha (Iran). Later he was forced to leave Iran and eventually took refuge in Ahmad Nagar (Gujarat) in India. On introduction to Sultan Burhan Nizam Shah (I) (1508-1553 A.D.), he was appointed as one of his advisors. Shah Tahir impressed upon the Sultan to proclaim Shiism as the official religion.
12. Muhammad Obaidullah, op. cit., p. 272.
13. Aziz Jang, op. cit., p. 143.
14. For details about biography and academic contribution of Makhdum Ali al-Mahaimi see, Abdur Rahman Pervaz Islahi, *Makhdûm 'Alî Mâhâ'imî: Hayât, Âthâr wa Afkâr*, Naqsh-i-Kokan Trust Publications, Mumbai, 1976.
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16. Yusuf Kokan Umari, op. cit., p. 26.
17. Muhammad Obaidullah, op. cit., p. 280.
18. A.R.Momin, "Dr. Muhammad Hamidullah", *Tarjmân al-Islâm* (Varanasi), Vol. 53-54, Jan-June 2003, p. 12 ; Muhammad Rashid Shaikh, op.cit., p. 18 ; Yusuf Kokan Umari, op.cit., p. 2.
19. Yusuf Kokan Umari, op. cit., p. 32.
20. Ibid, pp. 146-149.
21. Ibid, p. 160.
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23. Ibid, p. 437.
24. Yusuf Kokan Umari, *Arabic and Persian of Carnatic*, Ameer and Company, Madras, 1974, p. 488.
25. Yusuf Kokan Umari, *Khânwâdah-e-Qâzi Badruddaulah*, op. cit., pp. 341-343 ; Muhammad Rashid Shaikh, op. cit., p. 21.
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30. Muhammad Rashid Shaikh, op. cit., p. 22.
31. Muhammad Khalilullah, op.cit. ; Muhammad Saud Alam Qasmi, op.cit.; Muhammad Rashid Shaikh, op.cit., pp. 22-23.
32. A.R.Momin, op. cit., p. 13.
33. Ahmad Ataullah, "Dr. Muhammad Hamidullah", *Ma'ârif* (Azamgarh), Vol. 174, No. 1, July 2004, p. 58.
34. For details about the history of Hyderabad and its development as a Centre of Islamic learning and culture see, Muhammad Tahir (editor), *Encyclopedic Survey of Islamic Culture*, Anmol Publications, Delhi, 2003, Vol.6

35. A.R.Momin, "Dr. Muhammad Hamidullah", *Hamdard Islamicus* (Karachi), Vol. 26, No.1, Jan-May 2003, p. 17.
36. Ahmad Ataullah, op. cit., p. 59.
37. Muhammad Latif Ahmad, "Dr. Muhammad Hamidullah kî Ta'limî Zindagî: Jâmi'ah Nizâmiyah kî Chahar Diwârî men", *Al-Tanvîr* (Hyderabad), 2005, p. 74. ; A.R.Momin, "Dr. Muhammad Hamidullah", *Tarjmân al-Islâm*, op. cit., p. 13.
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41. Ahmad Ataullah, op. cit., p. 60.
42. Muhammad al-Ghazali, "Dr. Muhammad Hamidullah", *Islamic Studies* (Islamabad), Vol. 42, No.1, 2003, p. 185 ; Tariq Mujahid, "Shakhsiyat Khakah", *Fikr-o-Nazar* (Islamabad), Vol. 40-41, No. 4-1, April-Sep. 2003, p. 15.
43. Muhammad al-Ghazali, op. cit., p. 185.
44. Ahmad Ataullah, op. cit., p. 61.
45. Muhammad al-Ghazali, op. cit.,
46. A.R.Momin, op. cit., p. 15.
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52. Muhammad Saud Alam Qasmi, op. cit., p. 110.
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55. Muhammad al-Ghazali, op. cit., p 186.
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57. Rashid Shaikh, op. cit., pp. 273-277.
58. As told by Ahmad Ataullah during interview on 18th Jan. 2007 in Hyderabad.
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62. Ahmad Ataullah, op. cit., p. 64
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68. Ibid.
69. Ibid.
70. Yusuf Zia Kavacki, op. cit., p. 34.
71. A.R.Momin, op. cit.
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74. Muhammad Hamidullah, "Tarâjîm-e-Qur'ân Majîd: Tazah bâ Tazah Nau bâ Nau", *Ma'ârif-e-Islâmî*, op. cit., p. 49.
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80. Lutfur Rahman Faruqi, op. cit., p. 132.
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Chapter - 2
Works of Dr. Muhammad
Hamidullah on *Qur'ân, Hadîth*
and *Sirâh*- A General Survey

Works of Dr. Muhammad Hamidullah on *Qur'ân*, *Hadîth* and *Sîrah* - A General Survey

Dr. Muhammad Hamidullah was a prolific writer and his works may be considered as encyclopedic ones. As a dedicated researcher and great Islamic scholar, Dr. Muhammad Hamidullah contributed to all the major branches of the Islamic sciences particularly *Qur'ân*, *Hadîth*, Islamic jurisprudence and *Sîrah* in different languages. Dr. Muhammad Hamidullah is one of those eminent scholars of the modern period who had left very deep impact on the academic life of the Muslims of the entire world. His writings covered major subjects of Islamic studies including *‘Ilm al-Qur'ân*, *Hadîth*, Islamic jurisprudence, *Sîrah* of the Prophet Muhammad (SAW), history of the formative period of Islam and International law of Islam. His works are also considered very important from the point of view of their high standard of research and rich material about the subject concerned. His works are based mainly on the original sources. While utilizing the sources, he did not simply borrow material from them but adopted critical attitude towards them. It also goes to the credit of Dr. Hamidullah that his works are not confined to any particular language. These are available in the well known languages of the world such as Arabic, Urdu, Persian, English, French and Turkish. The importance of Dr. Hamidullah's published works is widely recognized by modern scholars all over the world. Some of the modern scholars

have highlighted the significance of the work so much that they compared his academic contribution with that of Abu Nasr al-Farabi (d. 950 A.D.), Abu Hamid al-Ghazali (d. 1111 A.D.) and Shah Waliullah Dehlawi (d. 1762 A.D.).¹ It goes to the credit of Dr. Muhammad Hamidullah that he has left more than 150 published books and thousands of research papers and articles in different languages. There is great controversy among writers on Dr. Hamidullah about the exact number of his published books. It varies between 37 and 175.² With regard to his works, what is more important to see is the value of their contents which shows his excellence in different subjects of Islamic studies and his command over the well known languages of the world. It may be realized from the detailed study of his works and analysis of their contents. Here, only a brief introduction of his works on *Qur'ân*, *Hadith* and *Sîrah* are given for this purpose, his works are classified thematically.

Translation of the Holy *Qur'ân* and Works on Quranic Studies

1. Le Saint Coran (French):

This is the French translation of the Holy *Qur'ân*. In view of the fact that there were some earlier French translations of the *Qur'ân*, Dr. Hamidullah pointed out that these translations have many inaccuracies. In this regard, he has mainly referred to the translations of Savary, Kasimirski and Blachere. Referring the verse

وَإِذَا رَأَيْتَهُمْ تُعْجِبُكَ أَجْسَامُهُمْ وَإِنْ يَقُولُوا تَسْمَعُ لِقَوْلِهِمْ كَأَنْهُمْ خُشْبٌ مِّنْ سِنْدَةٍ يُحْسِبُونَ كُلَّ صِحْحَةٍ عَلَيْهِمْ هُمُ الْعَدُوُّ فَاحْذَرْهُمْ قَاتَلَهُمُ اللَّهُ أَنَّى يُؤْفَكُونَ (المنافقون / ٤)

he says that the translation of the verse in these translations was imperfect.³

The preface of the translation by the learned author is very informative and gives detailed account of the collection and compilation of the Holy *Qur'ân* and the progress of the translation works in different periods. The important matters discussed in this preface are:⁴

Auteur Du Coran	Author of the Holy <i>Qur'ân</i>
Revelation	Revelation
Le Coran et Le Hadith, ou sunna	The <i>Qur'ân</i> and <i>Hadith</i> or <i>Sunnah</i>
Le Contenu du Coran	Contents of the <i>Qur'ân</i>
Conception Coranique de la Vie	Conception of Life in the <i>Qur'ân</i>
La Femme, Dans le Coran	Status of Women in the <i>Qur'ân</i>
L'esclavage	Slavege
Esquisse de la vie de Muhammad dans le Cadre des Donees Coraniques	Life of Muhammad in the Light of the Holy <i>Qur'ân</i>
Histoire de la Redaction du Coran	History of Collection and Compilation of <i>Qur'ân</i>
Histoire de la Tranduction du Coran	History of Translation of <i>Qur'ân</i>
Liste des Traductions du Coran en Laguages Europeenes	List of Translations of <i>Qur'ân</i> in European languages
Index Des Tranducteurs	Index of Translations

The work is the first complete French translation of the Holy *Qur'ân* done by a Muslim and became very much popular in French in the same way as the English translation of Abdullah Yusuf Ali is quite popular among the English knowing people.⁶ On account of the importance and high standard of this translation, the King Fahad *Qur'ân* Printing Complex (Madinah) took up its publication in 1987.⁵

The translation consists of 617 pages and is double coloured. Translation is in black colour and notes on translation are in red. The Arabic text and translation are given on separate pages. An important feature of this translation is Dr. Muhammad Hamidullah's explanatory notes in relation to those verses where the *Qur'ân* addresses non-Muslims. In his commentary he also referred to other religions like Zoroastrianism, Brahmanism, Buddhism, Sabeanism, Judaism and Christianity. For instance, in the commentary of verse:

وَإِنَّهُ لَفِي زُبُرِ الْأَوَّلِينَ (الشعراء / ١٩٦)

(Without doubt it is (announced) in the revealed Books of the former people)

He quotes the sayings of the Prophets from Hazrat Idris (AS) to Hazrat Isa (AS) and that of preachers of other religions including Hinduism and Zoroastrianism.⁶ Some other features of the translation are followings.

No Use of *Qausain* (Bracket):

Dr. Hamidullah avoided the use of *qausain* in interpretation of verses. Even in cases where was need for any explanation he preferred footnotes instead of

qausain. For example wherever the word *Qul* appeared in the *Qur'ân*, the English interpreters translated it by using 'say you (O! Muhammad)' or 'say you (O! Beloved)'. But Dr. Hamidullah used 'Dis' in the main interpretation and put 'Dis Muhammad' in footnote, to bring to the notice of the reader that Prophet (SAW) is being address by Allah in that particular verse.⁷

Literal Meaning of Arabic Words:

Dr. Hamidullah kept in mind the essence of literal meaning of Arabic words while translating the verses in French. This methodology was adopted to restrict the literal interpretation. The translation of the first verse of chapter *Fâtiḥah* is given in the following words.

الْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ (الْفَاتِحَةُ / ١)

“Lounge a Dieu, Seigneur des mondes”

Here, Dr. Hamidullah translated ‘*Alamîn*’ as ‘des mondes’ which means Lord of the worlds which is perfect. English translators like Abdullah Yusuf Ali translated ‘*Alamîn*’ as “The Cherisher and Sustainer of the worlds”. Marmaduke Pikhall translated it as “Lord of the worlds” and Muhammad Asad used “The Sustainer of all the worlds”. Dr. Muhammad Hamidullah’s translation appeared to be more literal than that of the other translators.⁸

Yet another instance to understand the literal approach of Dr. Muhammad Hamidullah is the translation of the word ‘*Shaitân*’. He translated it in the French words “Le Diable” thereby differed from others who had used the words like

Chaitan, Iblis or *Chayatin* in case of plural. Dr. Muhammad Hamidullah used these words in footnote to explain actual position for the readers.⁹

Suitability of word for Allah Almighty:

Dr. Hamidullah was careful enough while translating *Qur'ân* into the French version to avoid any unsuitable words which may appear against the dignity of Almighty. An example would make the point clear. Marmaduke Pickthall translated the following verse as follows:

وَيَمْكُرُونَ وَيَمْكُرُ اللَّهُ وَاللَّهُ خَيْرُ الْمَاكِرِينَ (الانفال / ٣٠)

(They plot, but Allah (also) plotteth and Allah is the best plotters)

Abdul Majid Daryabadi translated it as:

(They were plotting and Allah was plotting and Allah is the best plotter)

But, Dr. Muhammad Hamidullah translated the same verse as:

(Et les autres se mirent à stratégier, Dieu aussi stratégie. Et Dieu est le meilleur des stratéges)¹⁰

Now, if we compare the word 'plot' as used by Pickthall and Abdul Majid Daryabadi with the 'Strategies' as used by Dr. Muhammad Hamidullah, it would become clear that 'Strategies' is more appropriate word. 'Plot' literally means a secret plan to do something illegal or wrong, while a strategies (strategy in English means a plan designed to achieve a particular long term aim).¹¹

Abdullah Yusuf Ali's translation appears to be similar to that of Dr. Muhammad Hamidullah, when he translates the above verse as:

(They plot and plan and God too plan, but best planner is God).

This French translation became quite popular and it was published from different places including Francais Du Livre, Paris (Oct. 1959 and Nov. 1959), Imprimerie De Carthage, Paris (1963), Padoux, Paris (1965), Club Francais Du Livre, Paris (1966 & 1971), Salih Ozcan, Beirut (1973), Ishâ'at al-Islâm, Delhi (n.d.). Besides. its edition also appeared from Madinah, Ankara. Kuwait and America.¹²

2. *The Holy Qur'ân* (English):

It is simple translation of the first two *Sûrah* of the Holy *Qur'ân* in English language. Some parts of the translation were published in the journal *Al-Hâdî al-Amîn*, Durban (South Africa) during 1960-1965 under the title of "The Holy Quran- A Simple Commentary".¹³

3. **German Translation of the Holy *Qur'ân*:**

Many translations and commentaries of the *Qur'ân* in German were available, but none was rendered by Muslim. Dr. Muhammad Hamidullah filled up this gap and prepared a new German translation of the *Qur'ân*. The work contains only translation of first three *Sûrahs*. Unfortunately it could not be published tilnow.¹⁴

4. *Mushaf-e-Uthmâni* (Arabic) (The Copy of the *Qur'ân* of Hazrat Uthman R.A.):

It is well-known that two of the 7 copies of the Holy *Qur'ân* prepared under the care and supervision of Hazrat Uthman are still available. One of them is preserved in the Tashkent museum (Uzbekistan). It was written in *kufi* script. Amir Taimur (1366-1405 A.D.) took this copy from Damascus (capital of the Umayyad Caliphate) and kept it in Samarkand. From there, the Communist government brought it to Saint Petersburg (Russia) in 1920 and in 1924 it was returned to Tashkent (Uzbekistan).¹⁵ The second manuscript of *Mushaf* was kept in Topkapi museum of Istanbul. This particular copy is preserved in its original condition with blood drops of Hazrat Uthman (RA).¹⁶

It goes to the credit of Dr. Muhammad Hamidullah that he carefully studied and compared both the copies of *Mushaf-e-Uthmâni* page by page. Finally, he prepared a complete copy. The facsimile edition was published for the first time from Aisha Begum Publisher (America) in 1987 and second edition appeared from *Dustar-e-Deccan* (California) in 1993.¹⁷

Dr. Hamidullah asserts that the manuscript of Hazrat Uthman was in Damascus for a long time before it reached Samarkand. But, other historians mentions its preservation in Basrah instead of Damascus. Ibn Batuta writes, "the people of Basrah are well etiquetted and humble hosts. No traveller feels aloof or strange amongst them. They pray Friday prayer in the mosque of Caliph Ali (RA).

This mosque opens for Friday prayer only. Extremely beautiful with a vast backyard paved with red gravels brought from valley Sabâh, this mosque has one more distinction. The manuscript that Hazrat Uthman was reading at time of martyrdom is also kept there”. The page which Hazrat Uthman was reciting is still blood stained but the stain has become dim with the passing time. The verse on which the blood stain is

فَسَيَكْفِيكَهُمُ اللَّهُ (البقرة / ١٣٧)
(But Allah will suffice thee as against them)

Muhammad Amir Khanji says, “The said manuscript was first transferred from Basrah to Samarkand and from there to Russia and is still preserved in St. Petersburg’s *maktabah*”. Muhammad Amir Khanji was alive in the third decade of the 14th century A.D.¹⁸

Likewise, Dr. Muhammad Hamidullah discussed the transfer of that Quranic manuscript from St. Petersburg to Tashkent and attributed this to an army general Ali Akbar Tauchpi Bashi. According to Dr. Hamidullah the above mentioned general sent a commando to the royal palace and got the manuscript which was later on transferred to Tashkent through a train.¹⁹ But this is not the true. The factual position is that the overthrowing of Tzar and overtaking by communists caused resentment in Muslims. Certain Muslims went out in group to get the manuscript from *maktabah* by using force but they could not succeed. After the October revolution, Muslims convened a meeting in St. Petersburg and constituted a committee to bring back the manuscript from the *maktabah*. This

committee decided to get back this manuscript by taking recourse to the legal ways and observing the rules of *Shari'ah*. Eventually, when Muslims requested Lenin, he accepted their demand and ordered that the manuscript be handed over to them.²⁰

Following is the letter written by Lenin to the Education Minister. Anatio Vaslevochi²¹

To,

Dated 19 Dec.1917

The Education Minister

Anatio

The committee of Muslim on behalf of the whole Muslims of St. Petersburg has sent a letter to the office of commander and have demanded the return of the Holy manuscript which is in the custody of government (kept in the Royal Library). Muslims have deputed two people in this regard- Uthman B., army general and Karimi M., the Member of Parliament.

It has been decided by the National Communist Committee that Muslims be given the custody of the Holy manuscript without further delay.

Since this has been decided by the National Communist Committee. I want this memorandum to get executed as soon as possible.

President

Communist committee

Vladimir Ilyich Lenin

This letter shows that it was Lenin who gave the manuscript to Muslims and not the army general as stated by Dr. Hamidullah. Muslims thereafter brought the manuscript to Tashkent and it was kept in a big hall. Keeping in view the historical value and sanctity of this manuscript, the government issued an order in 1926, by which it was kept in the National Museum of Tashkent.²²

5. *Al-Qur'ân fî Kull-e-Lisân* (Arabic) (The *Qur'ân* in Every Language):

It is bibliography of the translations of the Holy *Qur'ân* in 125 different languages of the world along with the text of translation of the *Sûrah Fatihah* in each language as an example. Its first edition consisting of 23 languages was published from 'Alamgîr Tahrik-e-Qur'ân Majid (Hyderabad) in 1945. The next two editions were published from the same place in 1946 and 1947, with details about 43 and 67 languages respectively. In 1948, Dr. Muhammad Hamidullah settled in Paris and subsequently some parts of the bibliography were published in different journals of Paris (like *La Pense Chi'ites*, *France-Islam*, *Connaissance De L'Islam*).²³ However, he continued to collect material about the translations of the *Qur'ân* from different sources and for this purpose he made contact with his friends and travelled to different parts of the world. As a result of all these efforts, he was able to collect in 1988 more than hundred translations of the Holy *Qur'ân*. Of these, 80 were complete and the rest were incomplete. Unfortunately, this collection was not published in the book form tilnow. However, a new bibliography was compiled by Ekmeleddin Ihsanoglu entitled *Word Bibliography*

of Translations of the Meaning of the Holy Quran; Printed Translation 1515-1980, published from Research Centre for Islamic History, Arts and Culture (Istanbul) in 1986.²⁴

Besides these works, Dr. Muhammad Hamidullah had also written research papers on the Holy *Qur'ân*, which were published in reputed journals of the world. Details about some of them are given below.

1. "Sign of Punctuation in the Copies of the Holy Quran: A Suggestion" (English):

The article was published in *Al-'Ilm* (Journal of the Centre for Research in Islamic Studies, Durban University) in Jan. 1994. In this article, author discussed grammar of the *Qur'ân* such as spelling, dialectical letters, vowels, phonetic etc. that were adopted by the later writers. At last, he gave a useful suggestion to Muslim writers to introduce the following punctuation marks in Arabic script of the Holy *Qur'ân*.²⁵

? [Marks of Interrogation]

! [Exclamation Mark]

: [Mark to indicate a Quotation]

2. "Qur'ân Majîd ke Tarjume" (Urdu) (Translations of The Holy *Qur'ân*):

The article was published in the monthly *Fârân* (Karachi) in Dec. 1977. Dr. Muhammad Hamidullah discussed the translation of the Holy *Qur'ân* from different aspects such as superiority of Arabic language over other languages, why

the *Qur'ân* has been revealed in Arabic language, history of translation of the *Qur'ân*. At the end, he gives a list of Quranic translations in 116 different languages of the world.²⁶

3. “*Qur'ân Majîd ke Farânsîsî Tarjume*” (Urdu) (The French Translations of the Holy *Qur'ân*):

The article was published in *Ma'ârif* (Azamgarh) in Dec. 1959 (Vol. 84, No. 6, pp. 460-474). In this article, Dr. Hamidullah has furnished useful information about 26 French translations of the *Qur'ân* and has also pointed out their characteristics.²⁷

4. “*Tarâjim-e-Qur'ân Majîd: Tazah ba Tazah Nau ba Nau*” (Urdu) (Translations of the Holy *Qur'ân*: Latest and Up to Date):

The article, published in the Nov. 1988 issue of the *Ma'ârif*. First of all, Dr. Hamidullah supplemented new material to his article which had appeared in *Ma'ârif* thirty years ago (referred above). He has also corrected some wrong information given in his earlier article about the French translations of the *Qur'ân* and then the learned writer gives detailed introduction of his own French translation of the Holy *Qur'ân* called *Le Saint Coran*, followed by history of bibliography of the Holy *Qur'ân*. The work also contains a critical study of Dr. Ahmad Khan's Urdu book, *Qur'ân Majîd ke Urdû Tarâjim*, published from Muqtadarah Qaumî Zabân (Islamabad) in 1987.²⁸

Hadīth, Sīrah and their Related Subjects:

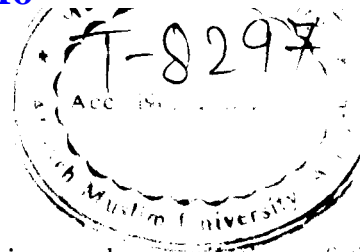
1. *Sahīfah Hamām Ibn Munabbih* (Urdu):

This is a very important work on *Hadīth* which is actually a critical edition and compilation of *Sahīfah Hamām Ibn Munabbih*, one of the earliest collections of *Hadīth*. The work consists of 138 traditions on various subjects, which were collected by the well-known traditionalist of the early period of Islam, Hamam Ibn Munabbih (d.131 A.H. / 748 A.D.) on the authority of Hazrat Abu Hurairah (d. 58 A.H. / 677 A.D.), the most famous narrator amongst the Companions of the Prophet Muhammad (SAW). He called this collection *al-Sahīfat al-Sahīhah* and taught its traditions to his students.²⁹

This *Sahīfah* was later incorporated by Imam Ahmad Ibn Hanbal in his *Musnad* and its separate manuscripts are also preserved in Tubingen Library of Berlin and Zahīriyah Library of Damascus.³⁰

Comparing both the manuscripts with the text of *Musnad Ahmad Ibn Hanbal*, Dr. Muhammad Hamidullah prepared a critical edition of this work which was published along with a scholarly introduction of the editor from Damascus in 1953.³¹

In the introduction, Dr. Hamidullah has not only given very useful information about the manuscripts of the work but also discussed many important matters relating to the period of commencement of writing, collecting and compiling of the traditions in the early period.³² It is quite evident from the



discovery and publication of this work that collection and compilation of the *Hadith* had actually started in the period of Prophet Muhammad (SAW) itself and this also refutes the assumption that the compilation of *Hadith* started after the first century of *Hijrah* era.³³

The first edition of *Sahifah* appeared from Arabic Academy, Damascus, in 1953.³⁴ The *Sahifah* was translated into Urdu by Muhammad Habibullah, the elder brother of Dr. Muhammad Hamidullah and was published from Maktabah Nashât-e-Thaniyah (Hyderabad) in 1955.³⁵ The work was considered so much important that it was also rendered into other languages of the world including English, French and Turkish etc.³⁶

2. *Kitâb al-Sard wal-Fard fî Sahâ'if al-Akhabâr* (English)

This is English translation of an old collection of *Hadith* compiled by Abul Khair Ahmad Ibn Ismail al-Qazwini (d. 590A.H. / 1193 A.D.). The Work was transmitted by his son Abu Bakr Muhammad Ibn Ahmad al-Qazwini and is now preserved in Wazir Shahid Ali Pasha Collection No. 539 in the Sulaimâniyah Library, Istanbul.³⁷ *Kitâb al-Sard* actually contains the text of eleven collections of *Hadith* prepared by different companions of Prophet (SAW). These collections are called:

1. *Sahifah* Hamam Ibn Munabbih
2. *Sahifah* Kulthum Ibn Muhammad Ibn Abi Hurairah
3. *Sahifah* Abdul Razzaq an Abu Hurairah

4. *Sahîfah* Hameed al-Ta'wîl an Anas Ibn Malik
5. *Sahîfah* Ahl al-Bait an Ali Abi Talib
6. *Sahîfah* Khizr wa Ilyas an al-Nabi (AS)
7. *Sahîfah* al-Ashj an Ali Ibn Abi Talib
8. *Sahîfah* Ja'âfar
9. *Sahîfah* Kharash an Anas Ibn Malik
10. *Sahîfah* Abu Razzaq an Ibn Umar
11. *Sahîfah* Juwairiah Ibn Asma Ibn Umar³⁸

The work was rendered into English by Dr. Muhammad Hamidullah with annotation and introduction. The introduction of Dr. Hamidullah is quite informative and useful. It gives account of origin and development of *ʿIlm-e-Hadîth*, collection and compilation of *Hadîth* in early period. The learned translator has pin pointed those traditions of this work which are also available in *Sihah Sittah* (six authentic books of *Ahadîth*) and *Musnad* of Ahmad Ibn Hanbal. His explanatory notes about the difficult points of text of the book are of much importance for understanding the contents of *Ahadîth*.³⁹

3. *Sîrah Ibn Ishâq* (Arabic):

The work is a significant contribution of Dr. Muhammad Hamidullah to *Sîrah* literature. This is actually a critical edition of one of the earliest *Sîrah* work of the Prophet Muhammad (SAW) written by Ibn Ishaq (d. 151A.H./ 768A.D.).⁴⁰

It goes to the credit of Dr. Hamidullah that he discovered this important work on *Sīrah* which was untraceable for about 13 centuries. Its manuscript was not available in complete form in any library. Two parts of the work were preserved in the Library of Maktabah Qurûyain, Fas (Fez) and one was available in Zâhiriyyah Library of Damascus. Dr. Muhammad Hamidullah closely scrutinized these three parts of the manuscript and prepared its critical edition under the title “*Sīrah Ibn Ishaq Mussamah ba Kitâb al-Mubtadâ wal-Mab'ath wal Maghâzî*”.⁴¹

In the introduction of the work, the learned editor has given many important issues including Arabs’ concept of historiography in pre and post-Islamic period, origin of the *Sīrah* writing, early *Sīrah* literature and life and works of Ibn Ishaq.⁴²

This is also a notable work of Dr. Hamidullah on *Sīrah* that he critically studied *Sīrah Ibn Hishâm* and brought out weak aspects of this book. According to him, Ibn Hisham has not given all *riwâyat* of Ibn Ishaq. Dr. Hamidullah not only pinpointed them but also recorded them in the edition of *Sīrah Ibn Ishâq*. He also stated that Ibn Hisham quoted the traditions given by Ibn Ishaq on the authority of Ziyad Ibn Bakkai (d.183 A.H. / 799 A.D.). But, no narrator of this name is referred to in the manuscripts of Maktabah Qurûyain (Fas) and Zâhiriyyah Library (Damascus).⁴³

The work was first published from Ma’ahad al-Darâsat wal-Abhath lil-Tâdîb (Rabat) in 1976.⁴⁴ Its Urdu translation by Nur-i-Ilahi was first published in

second volume of the *Nuqûsh Rasûl Number* (a quarterly Journal of Lahore) in Jan. 1985. The work was also published in the book form from Milli Publications (Delhi) in 2000 and Centre Culturel Islamique (Hyderabad) in 2001.⁴⁵

4. *Majmû'ah al-Wathâ'iq al-Siyâsiyah li al-'Ahd al-Nabawî wa al-Khilâfat al-Râshidah* (Arabic) (Documents of Muslim Diplomacy in the time of the Prophet of Islam and His Orthodox Caliphs):

This is actually the Arabic version of his post-doctoral research work that he submitted to Sorbonne University (Paris) in 1935 to fulfill the requirement of his D.Litt. degree and was published for the first time in 1935 from G.P. Maisonneuve (Paris). The French version of the work is known as *Documents sur la Diplomatie Musulmane a L'e'poque du Prophete et des Orthodox Khalfes*. The work contains very rich material and is well documented.⁴⁶ The French work is divided into two volumes. While, the Arabic version is printed only in one volumes. The work takes into account the relations of the Prophet Muhammad (SAW) and the first four Caliphs with the chiefs of tribes and the rulers of different states. The work provides original source material for the study of diplomatic relations during the early period of Islamic history. It helps to understand the rules and principles that were laid down by Prophet (SAW) and followed by the pious Caliphs for the conduct of relations with non-Muslim states.⁴⁷

The works also contains the texts of the official documents (i.e. letters, agreements, treaties and administrative directives) prepared or issued in the period of the Prophet Muhammad (SAW) and first four Caliphs.⁴⁸

It was, of course, very significant contribution of Dr. Hamidullah to collect these rare documents through original sources and compile them in the book form after editing. Moreover, he deeply studied and analyzed the contents of these letters, treaties and other official documents. In the introduction, Dr. Hamidullah has also given historical background of these documents and has thoroughly discussed the authenticity and historical value of these documents.⁴⁹

The popularity of the work may be realized from the fact that it was published from several places including Mat'ba'ah Lajnnat al-Talif wal-Tarjumah wa al-Nashr (Cairo, 1941, 1956), Dâr al-Irshâd (Beirut, 1961, 1969, 1985). Abu Yahya Imam Khan Nawshari translated it into Urdu under the title of *Siyâsî Wathîqahjat Az 'Ahd-e-Nabawî tâ bah Khilâfat-e-Râshidah* and published from Majlis Taraqqî-e-Adab (Lahore) in 1960.⁵⁰

5. *Le Prophete De L'Islam* (French) (The Prophet of Islam):

It is an important presentation of *Sîrah* in French language and has many characteristics. The book consists of two volumes: The Prophet's Life and His Works. The first volume deals with the early life, mission and politico-religious aspect of the life and activities of the Prophet Muhammad (SAW). The work is actually the result of his deep study and important findings on *Sîrah*. The first

volume is primarily biographical in nature taking into account the main events of the Prophet's life and the second volume gives focus on his mission and teachings.⁵¹

In the preface, the author has discussed the rationale for studying the Prophet's life more than thirteen centuries after his death, when in the meantime, science has made incredible progress. He brings out several reasons for the importance of the study of *Sīrah* for Muslims and non-Muslims in the present days when modern science has made unimaginable progress. For instance, he says that the Prophet Muhammad (SAW) started social reform in a country where everybody fought against everybody else. This mission accomplished in only ten years laying the foundation of a state of more than three million square kilometer comprising the whole of the Arabian Peninsula, together with the Southern region of Iraq and Palestine. During this period the total number of loss of human life on both sides in war was not more than a few hundreds. So, it is necessary and quite important to study the life of such person who reformed society in a peaceful manner and preached his religion in such a way that it continuously spread and is still spreading. At present, it has become one of the largest religions of the world.⁵²

The work furnishes very rich information about the political, economic and social practices and institutions of the pre-Islamic Arabia and throws good deal of light on the political system and diplomatic norms of Arabia during the 6th and 7th centuries A.D. It also examines the relations between various states and tribal

groups in so far as they are relevant to the early history of Islam and the life of the Prophet (SAW).⁵³

The author has discussed in detail the attitude of the different tribes towards the Prophet (SAW) and his mission and has particularly highlighted the contributions of those tribes who whole heartedly supported the Prophetic mission and served the cause of Islam. The learned author has also examined the background for concluding pacts by the Prophet (SAW) with some tribes. Moreover, The work also gives details of the diplomatic relations of the Prophet (SAW) with different heads of states and examines their role in the spread of the message of Islam. It is quite significant that all these points were discussed with reference to the original sources.⁵⁴

It is notable that for the first time Dr. Hamidullah used the term '*the City State*' in relation to the holy cities of Makkah and Madinah and discussed the important aspects of their expansion and development accordingly. He also defined the constitution of the city state of Madinah as the first written constitution of the world.⁵⁵

It shows the significance of the work that it was translated in different languages including French, Turkish, Bosnian and English. First French version of the book was published by Librairie Philosophique J. Vrin (Paris) in 1959. Turkish translation by Dr. Salih Ozcan was published from Beirut in 1974. Prof. Nerkez Smailagic prepared its Bosnian version which first appeared from Zagreb in 1977.

English translation was done by Dr. Mahmud Ahmad Ghazi, published under the title *The Life and Work of the Prophet of Islam* from Islamic Research Centre (Islamabad) in 1998.⁵⁶

6. *Muhammad Rasulallah* (English):-

This is an important English work on *Sirah* of the Prophet Muhammad (SAW) and is quite useful for common readers.

The special feature of the book is the objective and realistic approach of the author towards various aspects of the Prophet's life. For instance, it was generally held by the Western as well as some Eastern scholars that the Prophet was born on Monday 20th April, 571 A.D., while Dr. Muhammad Hamidullah considers Monday 17th June 569 as the actual date of his birth.⁵⁷ Besides, it is generally held that Hazrat Khadija (R.A) was forty years old at the time of her marriage with the Prophet Muhammad (SAW). But, Dr. Hamidullah is of the opinion that Hazrat Khadija was 28 year old at that time. This shows a difference of only three years between the respective ages of husband and wife. In support of his standpoint, he stated: "This latter report seems to be corroborated by the biological facts that she gave birth to seven children, three sons and four daughters after her marriage with the Prophet (SAW): Taiyib, Qasim, Tahir, Zainab, Ruqaiyah, Umm-e-Kulthum and Fatimah."⁵⁸

In addition to the above, the Ascension of the Prophet (*Mi'râj*) is believed to be physical by a majority of Muslims. Dr. Hamidullah said: "Let us not

envisage it (Ascension) as a touristic affair, but of spiritual import". He argues that the *Qur'ân* itself has used the word *ru'yâ*, a vision for this event. And Prophet says "It happened while I was in a state between sleep and wakefulness". Further, according to Dr. Hamidullah this experience had been enjoyed by Enoch (Idris), Abraham (Ibrahim), Jacob (Yaqub), and several other Prophets too.⁵⁹ Moreover many other new facts discovered and presented by Dr. Hamidullah in the book are different from the views of other scholars.

The work was published from various places including Centre Culturel Islamique (Paris), Habib and Company (Hyderabad) in 1974, Hazâfah Publication (Karachi) in 1979. It was translated into Urdu by Nazir Huq, former chief editor of *Mashriq* (Lahore), and published in *Rasûl Number* of the reputed Urdu Journal *Nuqûsh* (Karachi) in Vol. 2, 1982.⁶⁰

7. *The Prophet's Establishing a State and His Succession* (English):

The work is an important part of the *Sîrah* literature produced by Dr. Muhammad Hamidullah. The work is related to the organization and functioning of state administration under the Prophet Muhammad (SAW).⁶¹ Bringing out the salient features and functioning of the Islamic state in the times of the Prophet (SAW), Dr. Hamidullah observed that the principles of government adopted by the Prophet (SAW) are quite relevant to the present days situations also. So, the detailed study of the conduct of state by the Prophet (SAW) and that of the

procedure of succession followed in the subsequent period has great importance in every period.⁶² The book is divided into the following chapters.

1. The Quranic Conception of State
2. Conception of State in Islam
3. The First Written Constitution in the World
4. Translation of the Text of the Constitution
5. The Prophet as a Statesman and His Treatment of non-Muslim Subjects and Its Fruits.
6. Budgeting and Taxation in the Time of the Prophet.
7. Financial Administration in the Muslim State
8. Constitutional Problems in Early Islam
9. 1400th Anniversary of the War of Banu Nazir
10. The Tele-Guided Battle of Jamal and Siffin
11. The Episode of the Project of a Written Testament by the Prophet on His Death-Bed

The book was published for the first time from Habib and Company (Hyderabad) in 1986 and then from Pakistan Hijrah Council (Islamabad) in 1988.⁶³

8. *The Battlefields of the Prophet Muhammad* (English):

The book was written for the first time in French language under the title *Le Champs de Bataille au Temp du Prophet* and was published from Revue Des

Etudes Islamiques (Paris) in 1939. The author himself produced English version under the title *The Battlefields of the Prophet Muhammad* and got it published in *Islamic Review* (London) during 1952-53. The work was published separately in the book form from different places in India and Pakistan including Centre Culturel Islamique (Hyderabad, 1959, 1973, 1983) and Zaifah Publications (Lahore, 1979). The Urdu version '*Ahd-e-Nabawî ke Maidân-e-Jang*, prepared by author himself was published for the first time in *Majmû'ah Tahqiqât-e-'Ilmiyah* the Urdu Journal of Osmania University (Hyderabad) in 1940. In 1945, it was published as a separate book from Intezâmiyah Press (Hyderabad). The book became so much popular in the academic circle that it was translated into several languages including Arabic, Persian, Turkish, Malayalam and Sindhi. The work is divided into nine Chapters' namely.⁶⁴

1. Preliminary Remarks
2. Badr one of 'IFS' of History
3. Uhad
4. Battle of Ditch
5. The Conquest of Makkah
6. The Battle of Hunain and Taif
7. Wars with Jews
8. Military Intelligence in the Time of Prophet Muhammad (SAW)

9. Military Department of the Muslim State in the Time of the Prophet Muhammad (SAW)⁶⁵

In this book Dr. Muhammad Hamidullah discussed the life of Prophet Muhammad (SAW) as a Commander-in-Chief of the Muslim army. He did not follow the traditional method to show that the battles were conquered merely by miracles. He presents a detailed comprehensive study of Prophet's strategies and achievements in the battlefields. In the introduction of the book he writes:

"I never refer to the miracles of the Prophet Muhammad in my description of his "great exploits". My humble reply is that I am dealing with a general and comprehensive life of the messenger of Islam in order to discuss this point. If he had achieved his success by miracles only, his life could not be an *Uswah Hasanah*, a practical example to be followed by the common man, which it was according to the *Qur'ân*. Unless this human aspect of cause and effect is put before the common man- who does not and can not rely on miracles, but has to help himself in the struggle of existence- he will not find the conduct of the Prophet Muhammad a worthy and a practicable example to imitate".⁶⁶

The most important aspect of the book is that it was written on the basis of authentic sources of Islamic history including *Sîrah Ibn Ishâq*, *Sîrah Ibn Hishâm*, *Târîkh al-Tabarî*, *Tafsîr al- Tabarî*, *Tabaqât Ibn Sa'd*, *Wafa al-Wafa Li al-*

Samhudi, Maghâzi al-Waqidi etc.⁶⁷ Dr. Hamidullah also visited Madinah, Makkah and Taif in 1932 and 1939 to determine the locations of various battlefields. He measured the exact locations of these battlefields in the light of the data preserved in the early Islamic texts and prepared maps and graphs. The book also highlighted the political and diplomatic background of the various battles and examined their impact.⁶⁸

9. *'Ahd-e-Nabawî men Nizâm-e-Hukmrâni* (Urdu) (Administrative System in the Period of Prophet Muhammad (SAW)):

It is collection of the articles of Dr. Muhammad Hamidullah on the administrative system of the period of the Prophet (SAW) and the administration of justice in Madinah which he named "City State". These articles first published in various journals and later compiled in the form of book. The details of publication of these articles are as follows:⁶⁹

1. "Rasûl-e-Akram (SAW) kî Sîrat kâ Mûtâla'ah kis liye kiyâ jâyê", *Nashriyah Sadr-e-Majlis Ishâ'at-e-Sîrat* (Hyderabad), 1936.
2. "Shahri Mamlakat-i-Makkah", *Ma'ârif* (Azamgarh), Jan.-Feb. 1942.
3. "Dunia ka Subse Pahla Tahriri Dastur", *Majallah Tailasaniain* (Hyderabad), 1939.
4. "Qur'ânî Tasawwur-e-Mamlakat", *Ma'ârif* (Azamgarh, Dec. 1941).
5. "Islâm men 'Adal Gustarî apne Âghaz men", *Majallah Tahqiqât-e-'Ilmiyah* (Hyderabad), 1936.

6. “ ‘Ahd-e-Nabawî kâ Nizâm-e-Ta‘lîm”, *Ma‘ârif* (Azamgarh), Nov. 1941.
7. “Jâhiliyat-e-‘Arab ke Ma‘âshî Nizâm kâ Asar”, *Majallah Tahqîqât-e-‘Ilmiyah* (Hyderabad), 1943.
8. “‘Ahd-e-Nabawî kî Siyâsat kârî ke Usûl”, *Siyâsat* (Hyderabad), Jan. 1940.
9. “Tâlîf-e-Qalbi: Siyâsat-e-Khârja ke Usûl”, *Majallah Nizâmiyah* (Hyderabad), March 1938.
10. “Hijrah: Nau Âbâdkârî”, *Siyâsat* (Hyderabad), 1940.
11. “Ân-Hazrat aur Jawâni”, *Dars-e-Qur‘ân* (Hyderabad), Jan. 1946.
12. “Ân-Hazrat ka Sulûk Naujawano ke Sâth”, *Nashar-e-Anjuman Muslim Naujawan* (Hyderabad), n.d.

This volume contains very rich material on the organization of government under the Prophet (SAW) and is based on the original sources which were not available to other *Sîrah* writers. Several editions of the work have appeared till now and each edition contains some additional material and new findings.⁷⁰

Its several editions appeared from different places of Indo-Pak subcontinent including Maktabah Jâmi‘ah (Delhi, 1944), Maktabah Ibrâhimiyyah (Hyderabad, 1948), Urdu Academy Sindh (Karachi, 1980 and 1948) and Islamic Book Foundation (Delhi, 1995).⁷¹

10. *Rasûl-e-Akram kî Siyâsî Zindagî* (Urdu) (The Political Life of the Prophet Muhammad SAW):

The work relating to the political life of the Prophet (SAW) is also an edition and compilation of different research papers of Dr. Hamidullah which were produced during 1935-50. The author discussed political life of Prophet Muhammad (SAW) and international relations of Islam with Rome, Iran and Middle East etc.⁷²

The major parts of the contents of this book are the same as available in his French book, *Le Prophete De L'Islam* (The Prophet of Islam). But it has special importance for Urdu reader. The value of the work is quite evident from the fact that its several editions have appeared and each edition contained some fresh material.⁷³

The work was first published from Ishâ'at-e-Islâm (Lahore) in 1950. Other editions were published from different parts of Indo-Pak sub-continent including Ishâ'at-e-Islâm (Lahore, 1955), Dâr al-Ishâ'at (Karachi, 1961, 1980, 1984 and 1987) and Taj Company (Delhi, 1985).⁷⁴

Apart from these books, Dr. Muhammad Hamidullah also contributed many articles on *Hadîth* and *Sîrah*, which were published in reputed journals of the world. A few of them are given blow.

1. "Administration of Justice in Early Islam" (English):

In this article, the author has given a detailed account of the administration of justice as worked in the time of the Prophet (SAW) which is, of course, the best model for the whole world in every period. The article was published in *Islamic Culture* (Hyderabad) in April 1937.⁷⁵

2. "Budgeting and Taxation in the Time of the Holy Prophet" (English):

The article is related to very important aspects of the financial administration of budgeting and taxation of Prophet's time with reference to the original sources. The author furnishes very useful information about the incomes and expenditures of Islamic state. It also appears from the article that the budgeting system was introduced in the same period. The article was first published in *The Journal of Pakistan Historical Society* (Karachi) in January 1955 and reprinted in *Islamic Review* (England) in Nov. 1956.⁷⁶

3. "Educational System in the Time of the Prophet" (English):

The article is related to the educational system of the Prophet's time. The matter was discussed by him in detail from different aspects including establishment of *Madâris* or centers of learning, system of examination, curriculum, women's education, teaching of non-Arabic languages, deputation of officers in different parts of Islamic state and their jobs. The article for the first time was published in *Islamic Culture* (Hyderabad) in Jan.1939. Its Urdu version

“‘*Ahd-e-Nabawî kâ Nizâm-e-Ta’lim*” was published in *Ma’ârif* (Azamgarh) in Nov. 1941 and *Nuqûsh Rasûl Number* (Idârah-e-Farogh-e-Urdu, Lahore) Vol. 4, Jan. 1983, pp. 115-127.⁷⁷

4. “‘*Ahd-e-Nabawî kî Siyâsat Kârî ke Usûl*” (Urdu) (The Political Principles in the Time of Holy Prophet):

It is a small but pioneer treatise for the Muslim Statesmen and rulers and was published for the first time from *Idârah Adab-e-Jadîd* (Hyderabad) in 1943. In this article, the author has not only discussed the political principles of Prophet for non-Muslims who were to be brought with in the ambit of Islam, but also presented the principles to govern Muslims too so as to pave way for a stable State.⁷⁸

From the above discussion, it is quite clear that Dr. Muhammad Hamidullah showed great achievements in the field of *Qur’ân, Hadîth and Sîrah*. French translation of the *Qur’ân* is credited to him. This got him applause from every quarter and it is even asserted that this achievement was reserved to his destiny only. After discovering and publishing *Sahîfah Hamâm Ibn Munabbih*, he gave evidences that collection and compilation of *Hadîth* had started in the period of Prophet (SAW) itself and this also refute the assumptions that the compilation of *Hadîth* started after the first century *Hijrah* era. It is also goes to his credit that he discovered *Sîrah Ibn Ishaq*. He worked on such points of *Sîrah* of Prophet which were the need of modern times such as education, war, politics and state administration.

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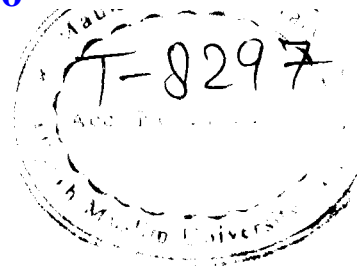
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Chapter-3
Critical Study of Dr.
Muhammad Hamidullah's
Works on Islamic
Law

Critical Study of Dr. Muhammad Hamidullah's Works on Islamic Law

Islamic law was another important and interesting field to which Dr. Muhammad Hamidullah made significant contribution in the form of books and articles. His contributions got worldwide recognition by scholars and researchers. Their evaluation would make the point more clear.

1. Kitâb al-Mu'tamad fî Usûl al-Fiqh (Arabic)

The book was written by Abu al-Husain al-Basri (d.434 A.H. / 1042 A.D.), a Mutazilite jurist, on principles of Jurisprudence (*Usûl al-Fiqh*) and may be considered as one of the earliest separate works on the subject. It goes to the credit of Dr. Hamidullah that he discovered its manuscripts, compared them and prepared a critical edition of this important work. Its manuscripts are preserved in *Jâme'* Masjid (Yemen), Topkapi Sarai Library (Istanbul), Laleli Library (Istanbul) and Saiful Islam Abdullah (Yemen). The first edition of the work was published by the French Institute of Archeology; Damascus.¹ The work contains the following chapters:

1. Al-Kalâm fî al-Awâmir
2. Al-Kalâm fî al-Nawâhî
3. Abwab al-Umûm wa al-Khusûs
4. Al- Mujmal wa al-Mubayyin

5. Al-Kalâm fî al-Af'âl
6. Al-Kalâm fî al-Nasikh wa al- Mansukh
7. Ijmâ'
8. Al-Kalâm fî al-Akhabâr
9. Al-Qiyâs wa al-Ijtehâd
10. Al-Kalâm fî al-Hazr wa al-Ibâhat
11. Al-Kalâm fî al-Muftî wa al-Mustaftî

The work has given the methodology which was adopted by Abu al-Husain al-Basri for compiling the work. The editor says that it is evident from the study of the book that Imam Abu al-Husain al-Basri has discussed the concerned issues thoroughly. In course of discussion, he quotes available sources and also gives his arguments in support of his views. He frames the hypothetical questions and answers himself. Whenever a person goes through the question, he is thrown into the thinking that what its answer might be and finding the answer in next lines, he is left delighted.² In the book, Abu Husain al-Basri has given many references from the *Qur'ân* while discussing principles of jurisprudence, Dr. Hamidullah has given the full references about the verses quoted by the author and he has also discussed in many cases the causes of revelations of these verses.³

While discussing the principle of Jurisprudence in his book, Imam Basri has also quoted many *Ahadîth*. Dr. Hamidullah has compiled the list of all these *Ahadîth* at the end of the book. The editor has quoted the *Hadîth* along

with the context in which it was quoted. This shows that the author has a huge collection of *Hadith* which was used by him in course of his discussion about the principles of *Fiqh*. In the view of above details Dr. Hamidullah concluded that Mutazilits were not against *Hadith*.⁴

The work contains a long preface in French which gives details of Imam Basri's life and his academic works. Dr. Hamidullah has discussed the principles of Islamic jurisprudence evolved by Imam Basri. The copies of a few pages of the manuscript are also appended to the preface.⁵

2. *The First Written Constitution in the World* (English):

This is well-known that Madinah Charter (*Wathâ'iq-e-Madinah*), prepared and promulgated by Prophet Muhammad (SAW) for the multi-religious citizens of the city state of Madinah in 622 A.D., is really a constitutional document of prime importance. Dr. Hamidullah has rightly designated it as the first written constitution in the world. Moreover, this is not only the first written constitution of the world but also revolutionary step in the sense that it was promulgated for a pluralistic society, giving equal rights to all those citizen of Madinah who agreed with the clauses of the Charter and pledged to adopt them in letter and spirit.⁶

Describing the conditions of Madinah, Dr. Hamidullah has given the factors which led to the preparation of the historic document. He says that the two Arab clans Aus and Khajraj were divided in twelve tribes and Banu Qainuqa, Banu Quraiza and Banu Nazir were divided in the ten tribes. They were involved in conflicts since centuries. Some Arabs, having entered into

alliance with some of Jews, had been on terms of hostility with other Arabs, who in their turn were similarly allied to some other Jews.⁷

The tribal rule prevailed in Madinah. They used to solve their problems individually and that was the reason why there was no central authority. On the other side, "Prophet (S.A.W.) had tried to centralize the power of twelve Arab tribes by appointing their twelve persons as his *naqibs* (proclaimers) at *Bait al-'Aqabah*. Through the efforts of twelve *naqibs* of Prophet (SAW), a considerable number of people accepted Islam. But Islam was yet a domestic affair there and had not attained any political status. Persons belonging to different religions used to live in the same house". Keeping in view these conditions, Prophet (SAW) had to carry out reform in Madinah by drafting the Charter. The Charter was drafted in view of the following requirements of people of Madinah.

1. Determination of rights of inhabitants of Madinah and Muslims.
2. Residential arrangements for the refugees of Makkah.
3. Agreement with non Muslims tribes especially Jews.
4. Organization of state administration and arrangements for defence of Madinah.
5. Compensation for the loss of life and property suffered by the refugees at the hands of the Quraish of Makkah.⁸

This Charter had 53 clauses divided into two parts. First part is related to rights of migrants of Makkah and helpers of Madinah and the second part dealt

with the rights and duties of the Jewish tribes of Madinah.⁹ Analyzing the contents of the first part of the Charter, Dr. Muhammad Hamidullah stated that Madinah was the first independent state of Muslims which had a written constitution. The supreme authority of this state was Allah and the Prophet (SAW) was obeyed as His messenger. In this independent state, an Islamic political unit was formed and it consisted of migrants of Makkah and helpers of Madinah, and also those who were willing to take parts in the wars under the guidance of and in co-operation with this united body of Muslims of Makkah and Madinah. It was further laid down in this Charter that this political unit will obey the orders issued by "the Prophet Muhammad, the messenger of Allah". In case of differences and disputes, the people will turn to him and his verdict in these matters would be final. All sections of Muslims will have equal rights and obligations. Thus, in view of Dr. Muhammad Hamidullah, it was first constitution of the world in which the principles of brotherhood, equality and freedom of action were defined in written form to play an active part in the political unit.¹⁰

With regard to the administration of justice for Muslims, Dr. Muhammad Hamidullah was of the opinion that the Prophet (SAW) was acknowledged as the final court of appeal by Muslims. The rights of seeking justice were transferred from the individuals to the community i.e. the Central Authority. He also pointed out that it was declared that in matter of the administration of justice, none would be permitted to take sides or show any favour to his relatives. All Muslims shall give full co-operation in the war

against those who make any mischief or are on the way of creating disturbance in the peaceful society.¹¹

A very important clause of this part was about the application of the principle of peace and war. The question of war and peace was regarded as the prerogative of central authority and it was made impossible that some section should enter into peace or war while others remained out of it. Military service was made compulsory and everyone was to take equal part in it. When the fighting was actually going on, different detachments would fight and take rest by turns. The whole battle would not be fought by one section of the army alone.¹² It was also stipulated that the selection of forces for military expedition would have to be done by the Prophet Muhammad (SAW) himself. If any enemy attacks over Madinah, everyone will take part in its defence. The expenditure on army will have to be borne by all citizens of Madinah.¹³

In view of Dr. Muhammad Hamidullah, another important clause of the Charter concerned provisions of mutual insurance which provide guidance to us for mutual insurance of modern times. The author says that Prophet (SAW) developed a system in which every tribe of Madinah was supposed to keep one unit of insurance. In case, any person of that tribe is made to pay ransom or blood-money and is unable to pay, this insurance unit will be helpful. In case the tribe could not pay individually, the general orders were that the neighboring tribe would help through their insurance units. In case, the units of all tribes are not sufficient then the state could come to help.¹⁴

The second part of the work which is related to Jews deals with their rights and duties. The Jews were free to follow their prevailing customs in internal matters and socio-cultural activities. The Jews were political and social rights as held by the Muslims. The allies of the Jews called variously as *mawâli*, *batn*, *bitânah*, were given equal status with the original Jews.¹⁵ It was also stipulated that Jews would not be obliged to help Muslims if the latter were involved in any religious war. But, it was made quite clear that Jews would have to fight against all those people against whom the Muslims were engaged in fighting. Similarly, they shall be in peace with whomsoever the Muslims may be in peace. They will take an equal part in the defence of Madinah and that the Jews will help the Muslims if these latter were attacked by anyone.¹⁶ The right to freedom of religious faith was declared in the Charter as “The Jews following their own faith and Muslims following their own faith”. In case the Jews take part in wars fought by Muslim bearing the expenses of war, they will be equally entitled to the booty. The judicial system provided that Jews be dealt with by their own laws and they could even approach Prophet (SAW) for adjudication. Prophet (SAW) used to adjudicate as per their own laws. With regard to the insurance, the blood money was to be paid by the tribe members and clients jointly.¹⁷

The work was published from *Islamic Review* (London), Muhammad Ashraf (Lahore) and Habib and Company (Hyderabad) in 1941, 1968 and 1983 respectively. Its Urdu version was published under the title “Dunyâ kâ Sabse Pahlâ Tahrîrî Dastûr” in *Majallah Tailasaniain* (Hyderabad) in 1939.¹⁸

3. *Muslim Conduct of State* (English):

This is one of the most important contributions of Dr. Hamidullah to International Law of Islam. The work is basically his doctoral thesis entitled “*Die Neutralitat in Islamischen Volkerrecht*” (Neutrality in Islamic International law), which he submitted to Bonn University (Germany) as D.Phil. thesis and was awarded the degree of the same in 1933. The work was, first of all, published from Zeilchrift Der Deutschen Morgenlandischess Gesellschaft (German) in 1935. After addition of new materials, it was published in several issues of *Islamic Culture* (Hyderabad) during 1941-42 under the title *Muslim Conduct of State*. The work was first printed in the book form by Muhammad Ashraf, Lahore, in 1941. It became so much popular in the academic circles that more than half a dozen editions has appeared.¹⁹

It is first systematic study of International law of Islam in English which defines the principles that regulate the relations of a Muslim state with non-Muslim states and their subjects. These problems arose with the expansion of Islamic state and establishment of contacts of Muslim states with other states, especially the friendly ones and their subjects. It is well known that Muslim jurists have taken up this problem under the chapter “*Kitâb al-Siyar*” in their juridical works. This is very significant that the author has discussed in detail the principles prescribed by the *Shari'at* for relationship with non-Muslim states in three well-known situations- peace, hostility and neutrality.²⁰ The author further explains that initially, the word *Siyar* was related to the life of Prophet (SAW) and the battles fought by him. But, Imam Abu Hanifah was the

first who used the word *Siyar* with respect to the rules relating to the treaties and battles under Islamic international law.²¹

Before discussing the evolution of Islamic international law, the work has thrown light on certain aspects of international law that was in operation in pre-Islamic period. The work mentions that ancient Arabs lived either nomadic or settled life. The Arabs who passed the settled life had generally their city states which were governed by their own rules. Though the Arabs spoke a common language, took part in common fair, consulted their problems with the same priests, worshiped the common gods, yet they were divided into tribes and every tribe was as an independent city state which was governed by its own rules. These Arabs tribes were based on intrinsic kinship as a nationality. He further observed that not only the city states of Arab had laws on international relations, but even large number of wandering tribes possessed the same physique of political personality. In political autonomy they were inferior to none. Territory they did possess, although they lived in different seasons of the year in different parts of the land. They also had their own political organization. They administered justice, they waged war and concluded treaties just as any other state.²² There were also principles of diplomatic relation in the city state of ancient Arab tribes. In Makkah, Banu 'Adi was given the charges of this department and Umar Ibn Khattab was the hereditary ambassador-spokesman of the tribe. The author says that the laws of declaration of war, treatment of enemies and their property, prisoners of war, distributions of booty, rights of envoys etc. prevailed in Arabs before Islam.²³

With regard to the evolution and growth of Islamic international law, the work highlights that the fundamentals of Islamic international law are available in the sayings and actions of Prophet (SAW) as stated above, but the compilation and codification of these principles and rules in a systematic way was done much later. The Muslims developed a science of international law and separating it from political science and general law and made it an independent subject. They wrote on the subject of *Jihād* (War) and *Siyar* (conduct in time of war and peace) in Arabic language. In this connection, the work mentions the name of several Muslim jurists including Zaid Ibn Ali, Imam Abu Hanifah and Imam Muhammad Hasan al-Shaibani.²⁴

Discussing the concept of peace the learned author dwelt at length the principles of sovereignty, independence, jurisdiction and diplomatic relations.²⁵

With regard to the jurisdiction of international law, the work has discussed the rights of people of Islamic states vis a vis non Muslim states. According to the author, Islamic law has given many rights to non-Muslims subjects in the capacity of *Zimmî*. They are exempted from *Zakât* and are not bound to render the defence services. They are to be governed by their own personal laws.²⁶ As far as a Muslim in non-Muslim state is concerned, the work says that he can follow the Islamic law fulfilling the obligations of the governing state.²⁷ The work furnishes very rich information regarding the principles of diplomacy including appointment of envoys, their duties and rights and these will be discussed in detail in the Chapter 7- Dr. Muhammad Hamidullah's studies on Islamic International Law. It is also important that the work traces the origin of

Islamic diplomacy to the period of the Prophet (SAW) and supported its views by the fact that Prophet (SAW) had sent many delegations to different emperors of that time such as Al-'Abbas was sent to Makkah as his secret agent.²⁸

In the work, Dr. Muhammad Hamidullah has discussed the definition of war, types of war, commencement of war, kinds of enemies, declaration of war, international treaties, prisoners of war, permitted and prohibited acts during war, termination of war and effects of termination. The work points out that the war can not be waged for the purpose of converting the non-Muslims into Islam, for self interest and for capturing power from others. Because, the Prophet waged all expeditions either for self-defence or for eradication of mischief.²⁹ The war can be waged against rebellious persons, because they can shake the foundation of Islamic society.³⁰ Prisoners of war are to be treated fairly and the female prisoners are not to be ravish. Mothers are not to be separated from their children.³¹ With regard to the treaty, the work emphasized that treaties not only terminate and stop the war but also is more often a source of mutual relationship, friendship and solve the problem for which the war started.³²

The author of the work has discussed the concept of neutrality in the light of *Qur'ân*, *Hadîth* and historical facts and has examined the principles under which the neutral behaviour can be accepted. Dr. Hamidullah points out that the concept of neutrality was practiced by Arabs since the ancient period. According to him, in 251 B.C., the Ghassanid prince of Syria and the

Byzantine emperor Decius entered a treaty of neutrality against Iran. The terms of neutrality were that the Ghassanid prince had to maintain the neutral behavior in the skirmishes of Iran and not become its ally. The work also highlights the treaties and state documents which were concluded by Prophet (SAW) for neutrality with different tribes residing in adjacent of Madinah. For example when the Prophet migrated to Madinah and constituted there a city state, he took the initiative of consolidating Muslim power by entering into alliance with non-Muslim Arab tribes living around Madinah, especially on the caravan-route of the Makkah to and from Syria. The following treaty with a chief of the Banu-Zamrah dates from the month Safar of the year 2 A.H.

“He (i.e. The Prophet) will not attack Banu-Zamrah nor will they attack him nor swell the troops of his enemies, nor help his enemies in any way” .³³

The work is based on the extensive study and critical analysis of the original sources including manuscripts available in various libraries of Arab, European and African countries Asian countries including India. In addition to the works on Islamic law and diplomatic relations, a number of books on the *Qur'ân*, *Hadîth*, Arabic literature, lexicography, biography, history, navigation and warfare were consulted by him in the course of collection of material for this book.³⁴

4. *Introduction to Islam* (English):

It is not a book of Islamic law but deals with many aspects of Islamic law in brief. Some of the matters discussed therein are like sources of Islamic

law, judicial system of Islam, solution of socio-economic problems of Muslims in the light of Islamic law. The work is quite useful for general readers because the points are presented in brief and a very simple style.

The work contains a chapter entitled “Judicial System of Islam”. The chapter takes into account the contributions of Muslims in the fields of Islamic law. It shows that the laws were available from the ancient time but the science of law was evolved by Muslims. It was Imam Shafii whose work *Risâlah* gave the detailed information on the science of principles of Law. This science was called by jurists as *Usûl al-Fiqh* and this science dealt with philosophy of law, sources of rules and principles of legislation, interpretation and application of legal texts.³⁵ Another contribution of Muslims which is given in the work is related to rights of humanity. The author says that Muslims were first in the world who gave the rights to humanity in definite shape in written form. The work also analyses the main contents of the Charter of Madinah (*Wathâ'iq-e-Madînah*), which has been already discussed in detail in relation to his work- *The First Written Constitution in the World*.³⁶

With regard to the legislation of Islamic law, the work gives the views of Dr. Hamidullah that *Qur'ân* and *Hadîth* are the basic sources of legislation. If *Qur'ân* and *Hadîth* are silent the *Ijtehâd* and *Ijmâ'* can also be exercised. The work also highlights the Islamic principles regarding the amendment of a law.³⁷ An inferior authority can not change the law, yet may interpret it. The power of interpretation is not the monopoly of any person in Islam. Every person having a special study of the Islamic law has the right to do so.³⁸ In view of Dr.

Hamidullah; Islam permits non-Muslim subjects of Islamic state to decide their cases in accordance with their own law. Far from imposing Islamic law on everybody, Islam admits that every group Christian, Jewish, or other should have its own tribunals presided over by its own judges, in order to have its own laws applied in all branches of law, civil as well as criminal. If the parties to a dispute belong to different communities, a kind of private international law decides the conflict of laws.³⁹

With regard to customs and usages of Makkah, the work pointed out that if they were within the bound of *Qur'ân* and *Hadîth*, the same continued to be practiced; otherwise they were amended in the light of *Qur'ân* and *Hadîth*. Another source of Islamic law is logical deduction. In view of Dr. Hamidullah, a jurist employing this method can deduce and elaborate the rules within the general guidance of *Qur'ân* and *Hadîth*. There were many jurists in Prophet's Period who were allowed logical deduction for solving problem such as Muaz Ibn Jabal was appointed as judge of Yemen and was permitted by Prophet to use reasoning for disposal of the new problems. The work also points out that jurists were fully free to employ the reasoning and there was no interference of central authority/ ruler. These principles contributed to the development of Islamic law.⁴⁰

In addition to the above matters, the work also discusses a number of socio-economic and political problems of modern period such as expenditure of *Zakât*, game of chance, status of non-Muslim in Muslim state, imposing of

additional taxes etc..⁴¹ These issues will be discussed in detail in a separate chapter.

The first edition of the work appeared in English from Centre Culturel Islamique (Paris, 1957). It was widely read and become so much popular that it was rendered into different languages of the world including French, Turkish, German, African, Arabic, Italian, Japanese, Singhalese, Tamil, Telugu and Yugoslav.⁴²

5. *Imâm Abû Hanîfah kî Tadwîn Qânûn-e-Islâmî* (Urdu) (Codification of Islamic Law by Abu Hanifah d. 767 A.D.):

The book is a comprehensive study of Abu Hanifah's contribution to Islamic law especially in its codification. Highlighting the importance of the codification of Islamic law, the author examines its methodology adopted by Abu Hanifah with the assistance of his distinguished disciples. The work also throws light on the sources of Islamic law.

Giving the biographical account of Abu Hanifah, the author pointed out that Abu Hanifah had about 1000 disciples and forty of them were distinguished and capable of exercising *Ijtehâd*. These were selected for codification of work. Imam Abu Hanifah used to put forth a question and disciples were required to give their opinions. Each and every aspect of the problem was discussed thoroughly. The differences of opinion were also considered and finally Imam Abu Hanifah delivered his verdict. It is evident from this proceeding of discussion that everyone was free to express his opinion and that the collective opinion was much valued than the individual

one.⁴³ By this method, Imam Abu Hanifah codified the works such as *Kitâb al-Râ'e* and *Kitâb al-'Arûs*. The real importance of the work lies in fact that the founders and distinguished jurists of other schools of *fiqh* also attempted to codify the *fiqh* of their own school on the pattern of Imam Abu Hanifah.⁴⁴

The work was published from Islamic Publications Society (Hyderabad, 1942, 1957) and Urdu Academy Sindh (Karachi, 1983). Its English translation was done by the author himself and was published under the title *Codification of Muslim Law by Abu Hanifah (d. 767 A.D.)* from Islamic Review (England) in 1957.⁴⁵

6. *Khutbât-e-Bahâwalpur* (Urdu) (Lectures at Bahawalpur):

The work as earlier stated is collection of Dr. Hamidullah's twelve lectures which he delivered at Bahawalpur University during 8th March to 20th March 1980 on different important aspects of Islamic Studies. The work contains four chapters on *Fiqh-e-Islami* and Islamic law namely *Târîkh-e-Fiqh*, *Târîkh-e-Usûl-e-Fiqh wa Ijehâd*, *Islâmî Qânûn Bain al-Mumâlik* and '*Ahd-e-Nabawî men Nizâm-e-Tashri' wa 'Adliyah*.'⁴⁶

In the chapter *Târîkh-e-Fiqh*, the author, first of all, has thrown sufficient light on the basic aspects of Islamic law such as, preservation of sources of Islamic law, origin and development of Islamic law, evolution of the principles of *Ijehâd*. After that, he examined the orientalist's views that Romans were the greatest law maker and they are superior to other nations in this regard. But, with reference to this view, the author observed "This claim is perhaps correct in so far as European is concerned. Though, the Greek who

preceded them made a remarkable contribution in many fields of knowledge but their contribution to law is not so eminent. Therefore, Rome was the pioneer in the field of law in Europe. It is unacceptable at international level".⁴⁷ In this connection, he quotes the famous historian of Roman law, Colinet, who says that Romans were influenced by Asian laws when they came into contact with them after the expansion of their empire. Accordingly they amended and developed their own laws. It means that the Asian law had influenced Roman law. Moreover, Justinian, who died a few years before the birth of Prophet Muhammad (SAW) tried to codify Roman law in its amended form. He was very intelligent king but was by no means an expert in law. He invited scholars to collect and revise the laws of the empire which suffered from inherent contradictions. This is how the Roman law was recodified. According to Dr. Hamidullah, this law may be a matter of great pride for the Europeans, but there are many drawbacks in it. One of them was that it had no stability, because it was man-made law i.e. a man can accept or reject the law made by another man. So, before the birth of Prophet Muhammad (SAW), the world faced a great legal challenge to produce a better code than the Roman law. The challenge was taken up by the Prophet (SAW) who produced a code which is in reality superior to that of Justinian. It does not suffer from the drawbacks of the Roman law and has strength, durability and performance. Hamidullah says, "Anyone who objectively compares the two will inevitably come to conclusion that the Islamic law is definitely superior".⁴⁸

An important part of the work is related to the history of the development of Islamic law. The author had discussed in detail the sources of Islamic law and has examined their crucial role in the development of Islamic law. Apart from *Qur'ân*, *Hadîth*, *Ijmâ'* and *Ijtehâd*, the author has included customs and usage, reciprocity and *Sharî'at* of earlier Prophets in the sources of Islamic law. Moreover, the author has also highlighted the role of *Qâzî* and *Muftî* in the development of Islamic law particularly in responding to the queries of common Muslim about the *Sharî'at*'s attitude toward new problems and in disposal of cases that arose among them. With reference to a directive of Hazrat Umar (RA), the learned author observed that the *qâzîs* were required to deliver judgment after careful study of the cases and close examining the relevant provisions of the *Sharî'at*.⁴⁹

Second chapter *Târikh-e- Usûl-e-Fiqh wa Ijtehâd* starts with deals with the history of the development of the principles of *Fiqh* and *Ijtehâd*. In view of author, this subject is distinction of Islamic jurisprudence. In his own words, "The principle of jurisprudence is a subject of which Muslim can be legitimately proud. In the history of mankind, different nations have added something to their own law, but the greatest contribution made by Muslims is perhaps principle of Islamic jurisprudence. Law existed before the dawn of Islam but the principle of Islamic jurisprudence did not exist anywhere in the world. Even today, we can say the principle of jurisprudence is the peculiar contribution of Muslim who filled a great void in the field of law".⁵⁰ He further observed that the earliest works on this subject was contributed by Muslim

jurists. Until the last century, this subject was not touched by any other religion of the world. It was Imam Abu Hanifah, who first wrote a book on the subject known as *Kitâb al-Râ'e*. The works of Imam Abu Yusuf and Imam Muhammad entitled *Kitâb al-Usûl* and *Al-Risâlah* of Imam Shafii are also important and are earliest contributions to the subject. Dr. Hamidullah has also appreciated a modern work (*The Principles of Muhammadan Jurisprudence*) on the subject contributed by Abdul Rahim. He has also discussed in detail principles of jurisprudence and has evaluated some new books on philosophy of law published in recent times in Europe.⁵¹

With regards to the *Ijtehâd*, the work emphasizes that *Ijtehâd* has played main role in the development of Islamic law. This principle renders Islamic law dynamic and enables the jurists of every period to solve the new problems through its application. The work also deals with the rules and regulations for *Ijtehâd*. In this regard the author says that *Ijtehâd* can be done only with regards to those problems about which *Qur'ân* and *Hadîth* are silent. The work also highlights the efforts of earlier jurists to provide juridical solution to the new problems by applying the principle of *Ijtehâd*. In his view, these efforts were made under different names like *Qiyâs*, *Istidlâl*, *Istihsân* and *Istislâh*.⁵²

In the chapter- *Qânûn Bain al-Mumâlik*, the author critically examined the working of International law in different countries in pre-Islamic period and then he came to the conclusion that there was no international law in true sense of the word before Islam. It was actually one of important contributions of Islam to the human civilization. The learned scholar observed that Greek

international law suffered from a serious draw back that it was confined to a few people and ignored the rest of the world which was considered barbaric and was not, therefore, worthy of being treated in accordance with law.⁵³

With regard to the Roman international law, the author says that Rome, which started as a city state, had in course of time ruled on a vast region including Europe, North Africa and parts of Asia. The law developed during the Roman period was not suitable for international law, because according to western writers, the Roman Empire respected law only in its dealing with states with which it had a treaty or close relationship and the rest of the world was governed by mere discretion. In view of the author, the international law developed in the West was not very old and it had also very limited scope. The so-called international law of Europe dealt with Christian states only till 1856. It was for the first time in 1856 that the European states felt obliged to apply the same law to a non-Christian state i.e. the Ottoman Empire. After that there was a gap of nearly sixty years. The second non-Christian state which was considered worthy of this treatment was Japan which defeated Russia in 1905.⁵⁴

On the other hand, the author pointed out that Islamic international law does not allow discrimination in dealing with non-Muslim states. It is equally applicable for all non-Muslim states. If international law is not confined to a few specific nations, then it originated with the advent of Islam and Muslims are perhaps the only nation in the world which can legitimately claim to possess an international law as has been discussed earlier in detail.⁵⁵

The chapter '*Ahd-e-Nabawî men Nizâm-e- Tashri' wa 'Adliyah*' is divided into two parts: legislation in the Prophet's period and judiciary in the Prophet's time. In the first part, the author has discussed only the concept of legislation in Islam as well as sources of Islamic law.⁵⁶

While discussing the judiciary of Prophet's time, the author has also examined the judicial system of pre-Islamic Arabia. The author is of the view that during the period of ignorance the Bedouin tribes of Arabia had neither a ruler nor a government nor a court of law. So, there was no possibility for anyone seeking justice in case a wrong done to him. The aggrieved party had no alternative but to fall back on its own resources and seek revenge. It was easy to do so in the case of a weak enemy but if the enemy was stronger there was no possibility whatever for the weaker party to secure justice.⁵⁷ He further explained that sometimes there was possibility of a third party settling the dispute in case the stronger party also agreed to accept a person as an arbitrator. In such cases the person selected as arbitrator was invested temporarily with the authority of a judicial officer whose decision was accepted by both the parties. Ukaz fair used to be held annually for two or three days. In this fair, foreigners also participated. During the fair officers were appointed temporarily to settle disputes which arose among traders. Everyone knew who these officers were. Those who decided to refer their cases to them had to wait for the Ukaz fair. As far as Makkah was concerned, it had three institutions to settle the disputes between citizens. One was the civil court which was presided over by Abu Bakr (RA) and other was a criminal court. In addition to the two

there was an institution called *Hilf al-Fudhûl*. This was an order of chivalry. But there was no possibility of such institutions of judiciary in Madinah. Every tribe was having its autonomous authority. In such conditions, Prophet (SAW) established a city state and framed its constitution.⁵⁸ One of its provisions was indeed of a revolutionary nature. Justice, instead of being treated as the concern of an individual, became the responsibility of the state. If someone was harmed, he was not authorized to punish the person concerned on his own but had to take the case to the central judicial authority. The central authority was responsible to impart justice to him or the aggrieved party.⁵⁹ Besides, the work contains detailed discussion about the institution of *mufti* and *qâzî* which were first established in Madinah and later came into operation into the whole country.⁶⁰

The book was published from different places of the indo-Pak subcontinent including Islâmiyah University (Bahawalpur, 1981), Islamic Research Institute (Islamabad, 1985, 1988, 1992, 1997, 1999,2001), Islamic Book Foundation (New Delhi, 1997, 2003) and Farid Book Depot (New Delhi, 2004). English translation done by Afzal Iqbal under the title *The Emergence of Islam* was published from Islamic Research Centre (Islamabad, 1985) and Adam Publishers and Distributors (New Delhi, 2007).⁶¹

7. *Qânûn Bain al-Mumâlik ke Usûl aur Nazîren* (Urdu):

The book, relating to the principles of international relations, was written, keeping in view of the requirements of L.L.B. students of Osmania University (Hyderabad). It is a general book on international law but at many

places it compares the concept of international law of different communities with Islamic international law. The learned author has discussed in detail about the principles of relationship between two countries in the condition of war, peace and neutrality.⁶² In preface, the work discusses origin and development of states, fundamental laws of their mutual relations, history of international law of Egypt, Palestine, India, Greece and Rome. The contribution of Islam to international law is also dealt in it. Furthermore definition of state, sovereignty and its types, succession of rulers, enemies and its kind are discussed.⁶³

Highlighting the distinctive feature of Islamic international law and showing the lacuna in other systems of law. Dr. Hamidullah observed, "the laws of Greece were only for the Greeks. Non-Greeks were considered as slaves and had no rights. Romans had divided world into three categories- Rome, the allies and enemies. If the subjects of ally state came to Rome, he was protected and if he had any complaint or grievance, it was rendered by the jurists as per his own national law. But those states with whom, Rome had neither friendship nor any cordial terms and were not in the category of ally, they were considered as enemies except for ambassadors or diplomats. The subjects of enemy state could not claim the right to be protected in person or property and the same rule applied to the subjects of Rome in enemy state".⁶⁴

If international law has global importance, it should be uniform and every state shall have equal rights. In this regard, the author pointed out that this aspect was taken into consideration only in Islamic international law. Arab scholars compiled rules, customs and usages to formulate a developed system

of Islamic international law and in the 2nd Hijra this system developed into a concrete art or separate discipline which was called by them as *Siyar*. The author says that European international law started to be formulated in 1554. Therefore the principles of concluding treaties prior to war and formulate conditions could not be evolved before 1554. On the other hand, Islamic international law developed much earlier as has been already discussed.⁶⁵

With regard to the jurisdiction of the law of non-Muslims in Muslim states and vice versa, he says “since the ancient times, Islamic state had granted permission to non-state people to be dealt with by their personal laws. There are enough historical evidences to suggest that at least till 3rd century *Hijra* and later on. Muslims were also permitted to be tried by their respective civil and criminal courts in states of China, Malabar and Turkistan etc. In China, the Muslims were adjudicated by Muslim jurist only, even if plaintiff was non-Muslim citizen of China. Such Jurist is called as *Hunarman*. Even European had been given such rights especially in the commercial centers of Egypt and Istanbul since long time”.⁶⁶

Discussing the rights of prisoners of wars, the work says that Romans considered them as slaves and the Christians formulated more stringent regulation about them. Islam guaranteed them rights and exhorted its followers to treat them well. The prisoners of war can be liberated either gratuitously, or on ransom, or in exchange of Muslim prisoners in the lands of the enemy, at the discretion of the commander/ ruler. The prisoners will be provided all necessary facilities. They will be given religious freedom, all the arrangement

will be done for the sick and injured prisoners. If any prisoner wants liberation on the commitment that he will not wage war against Muslims, he will be liberated. Their enslavement is permitted but this not obligatory.⁶⁷

With respect to the neutrality, the work gives the Islamic principles of neutrality by defining it as “During the war, a state does not support any of the warring state and keeps peaceful relations with the both” is called neutral state and this stand is called neutrality. The work traces its origin to the Prophet’s period. Prophet (SAW) concluded many such treaties as discussed earlier. So, the concept of neutrality in Islam is very old while in Europe, it is not more than 100 years old.⁶⁸

The work also gives details about the working of International law in modern period and takes into consideration the actual position of international law in Egypt, Palestine, India, Greece, Rome and Europe in present days. The study is based on the original Arabic sources as well as works of western and Indian writers. The work was first published in 1936 A.D. from Maktabah Ibrâhimiyah (Hyderabad).⁶⁹

In addition to the above works, Dr. Muhammad Hamidullah also contributed a large number of articles on Islamic law, State administration and International relation. Some of the important ones are discussed below:

1. “Influence of Roman Law on Muslim Law” (English):

It is a critical study of the influence of foreign law especially Roman law. The work shows that in the development and evolution of Islamic law only

those customs from outside were taken about which the *Qur'ân* and *Hadith* were silent and they were not against the letter and spirit of these basic sources. It is also said that *Qur'ân* itself clearly insisted that the path of Musa and Isa (AS) can be followed as they are on the guidance (6: 83-90). *Qur'ân* also accepted Bible and Gospel as a source of Islamic law. This is also recorded in *Bukhâri* and *Tirmizî* that the Prophet (SAW) acted in accordance with liked the traditions of earlier Prophets in case revelation did not come up about a matter.⁷⁰

The article analyses the influence of customs and traditions of other societies on Islamic law as soon as Islam spread out of Arab. In the opinion of Dr. Hamidullah after the Prophet's period, Muslims while settling in other countries had to face different customs, principles and rules. Obviously, jurists would have accepted those principles which were not in conflict with *Qur'ân* and *Hadith* and have incorporated them in the Islamic jurisprudence. The learned author says, it may be possible that the earliest jurists of Egypt and Syria would have accepted Roman customs; jurists of Iraq and Iran would have accepted Persian customs. The jurists of Spain would have accepted the customs of that country. Obviously, these customs were to be accepted only when *Qur'ân* and *Hadith* were silent with respect to them and these customs were not conflicting with them in nature. Jurists examined these customs and considered them lawful by application of analogy. It is also established that Hazrat Umar (RA) retained many aspects of old revenue administration in Iraq which was based on law of Iran. During the Caliphate of Hazrat Uthman (RA),

Islam spread from West China to Spain. In this vast area, Roman law was practiced before Islam reached there. In view of this situation, it may be possible that Islam had maintained the customs and principles of Roman law which were not against the spirit of *Qurân* and *Hadîth*.⁷¹

As regard the influence of Roman law on the portion of Islamic law which is directly based on *Qurân* and *Hadîth*, the work thoroughly examined this issue. The author says that “ultimate source of Muslim law is the person of the Prophet Muhammad, who gave Muslims *Qurân* as the Word of Allah and also the *Sunnah* or *Hadîth* which constitutes a record of the sayings and doings of the Prophet himself. But the Prophet knew neither Greek nor Latin nor Syriac through which to get a direct access to Roman law at that time. Practically all his life was spent in his native country of Hijaz. Moreover, there are no records of scholars of Roman law among the companions of the Prophet”. So, there is no scope of the influence of Roman law on the Islamic laws which are based on the *Qurân* and *Hadîth*.⁷²

In respect to the influence of Roman law on Islamic law in classical period, the work pointed out that all the classical schools of Muslim jurisprudence had flourished in non-Roman places such as Hijaz and Iraq. Hanafi and Maliki originated and developed either in Kufah and Madinah. Shafii and Hanbali belonged to Baghdad. Moreover, Umayyad had their capital in Damascus, where Roman law was prevailed but in this period the special attention was paid on the development of ‘*Ilm-e-Qurân*, *Hadîth*, history and literature. No serious attention seems to have been paid to law proper by

scholars living in that part of Muslim empire which was formally governed by Roman law. In Abbasid period, the metropolis was moved to Baghdad which was situated in Persian surroundings. It was then alone that zeal and impetus seem to have been brought to bear on law, and royal patronage was extended to jurisprudence as early as the days of the Caliph Mansur, who requested the Imam Malik to compile a code of Muslim law, which may be adopted in courts. The author concluded that it was quite clear that there was no influence of Roman law on Islamic law in classical period also.⁷³

Taking into account the main points of differences between Islamic law and Roman law, the author observed that Romans were polytheists and idols worshipers while Muslims were believers in *Tauhid*. Roman society was based on the system of parish. Arabs had this thing neither during the period of ignorance nor after the advent of Islam. In Roman law, the laws governing marriage and slaves were ruthless while Islam never subscribed to them. Roman terminology may be found in Muslim philosophy and medicine but not in Islamic law. The Muslim jurists used only Arabic terminology. No Muslim jurist is recorded to have learnt foreign language like Latin, Greek etc to comprehend Roman law. So, in view of the author it was totally wrong to trace the origin of Islamic law to Roman law. Apart from some customs and usages no part of Islamic law is influenced by Roman law.⁷⁴

The article was published in the *Hyderabad Academy Journal* (Hyderabad) in 1943. Its Urdu version entitled "Rumî Qânûn aur Islâmî Qânûn ke Ta'allûqât" was published in *Ma'ârif* (Azamgarh) in 1953.⁷⁵

2. “International Law in Islam” (English):

The article contains brief discussion about the sources and objectives of Islamic International law and laws of Islamic international law in three well known situations (war, peace and neutrality). It was published in *Islamic Review* (England) in May 1951.

Discussing the sources of Islamic international law, the author divided the sources of Islamic international law into two main categories: 1. Provisions of Islamic law with regard to foreign relations. 2. Agreements of Islamic state with other countries for mutual relations. Under the first category the author includes *Qur’ân* and *Hadîth* and commands of caliph or ruler based on the *Qur’ân* and *Hadîth*. The work has given special importance to the *Hadîth* of Prophet (SAW) as source of Islamic international law, because the Prophet established a state, commanded armies and administrated international law. So, the practices of the Prophet with regard to foreign relations have great importance as a source of Islamic international law. The work has not given further details of the second kind of source.⁷⁶

The work highlights that the main object of international law is to establish the sovereignty of Allah on the basis of His Commandments and eliminate all national prejudices such as colour, country and language as well as remind the men that they are the sons of same Adam and Eve, members of same family. In this regard work points out that Islam is the first religion of the world that have a universal call without difference of colour, country and

language. Even accidental superiority by birth was rejected; recognition was given only to the deliberate superiority of one's own conduct and piety.⁷⁷

With regard to the law of peace, the article has mainly discussed its subject matter such as sovereignty of states, the jurisdiction of the courts, their proprietary rights on territory and other movable and immovable property and their foreign relations called diplomacy.⁷⁸

In respect to the laws of war, the author stressed the point that "Islam means and stands for man's submission to the will of Allah. Hence Islam is perpetually at peace with those who surrender to the will of Allah, to practice of good; and Islam is perpetually at war with evil, with rebellion against Allah, our Creator. Islam differentiates between the dogmatic part of religion and between the rests of social life. Islam boldly declared, in the words of the *Qur'ân*, there is no compulsion in religion. Anybody may believe in any religion he likes. One will be held responsible to one's Allah Almighty in the next world for one's belief; in this present world there is no compulsion to embrace a religion. The liberty ends here. Belief and disbelief cannot be equal. It is natural duty of the believer to devote his life so that the word of Allah alone prevails". It is quite clear from the above statement of the author that Islam stands for peace and it is also demanded from its followers to work for spread of Islam in a peaceful way but any person of state try to prevent the work of propagation of Islam. The action may be taken by the Muslim state against such person or head of the state. According to the author, this war was not waged for converting the people to Islam but to bring their countries under

the Islamic rule where perfect religious freedom was guaranteed to every non-Muslim. In case war started, all the relations were broken and people of the enemy state will be given full freedom to return to their states. Diplomats are called back. During the war, non-belligerents, women and children will not be killed.⁷⁹

With regard to the principles of neutrality, the work points out that if two foreign states with whom a Muslim state had friendly relations go to war, the Muslim state has to maintain neutrality between the both countries. The principle of neutrality is to be strictly followed in relation to those states with whom the Muslims have pacts and they have not violated the pact. But, if the Muslim state has no pact with any one of warring states then the Muslim state can help any belligerent state only for the cause of justice-morally and materially without entering itself into the conflict.⁸⁰

3. "Islamic Notion of Conflict of Laws" (English):

In this article, Dr. Muhammad Hamidullah discusses private international law, which he also called conflict of laws. The main topics of his discussion are nationality, personal status of non-Muslim subjects and jurisdiction of pluralistic Muslims society in Islamic state.

In the section of nationality, the author discussed origin and development of nationality. He says that the origin of nationality must have been started by blood-relationship. The nationality was based on the prejudices such language, ethnic, chromatic, tribal. This is also found in Arabia before

Islam. In view of Dr. Hamidullah Islamic concept of nationality may be seen in the following verse:

يَا أَيُّهَا النَّاسُ إِنَّا خَلَقْنَاكُمْ مِنْ ذَكَرٍ وَأُنْثَىٰ وَجَعَلْنَاكُمْ شُعُوبًا وَقَبَائِلَ لِتَعَارَفُوا إِنَّ أَكْرَمَكُمْ عِنْدَ اللَّهِ
أَتْقَاكُمْ إِنَّ اللَّهَ عَلِيمٌ خَبِيرٌ (الحجرات / ١٣)

(O mankind! Lo! We have created you from a single male and female, and We have made you nations and tribes that ye may distinguish one another. Lo! The noblest of you, in the sight of Allah, is one who fearth (Him) most. Lo! Allah is Knower, Aware)⁸¹

According to the author this proclamation revolutionized and centralized the human vision regarding the nationality. This verse can be considered as a Charter of Islamic nationality. However, Islam did not recognize nationality on racial, geographical or linguistic basis but only on the basis of faith. The former basis is irrelevant under Islam. *Qur'ân* rejected them clearly in the above verse.

This is quite clear from the verses of the Holy *Qurân* that Islam guaranteed equality of mankind and allows division of people into group only for the purpose of identification. And their differences in colour and languages having only the signs of Allah not are the base of nationality. In view of the author All the Muslims are one *Ummah*. Wherever they live they are required to follow one law. But Islamic state does not guarantee safety to those Muslims who voluntarily reside in non-Muslim countries and Islamic courts does not have jurisdiction to render justice to such Muslims.⁸³

The article has also taken up problems emerging in a pluralistic society under Muslim state. If one of the parties is a non-Muslim and the other a

Muslim and the case has taken place in the Islamic territory, it would be decided by the Muslim court according to the Islamic law.⁸⁴ If a Muslim, citizen of the Islamic state is murdered, robbed or any wrong is done to him by a non-Muslim in a non-Muslim territory where the Muslim had gone on lawfully with the permission of the concerned government and later the same culprit came to the Islamic territory, no suit can be filed against him in the court of the Islamic territory because action is related to a place where Islamic state has no Jurisdiction as argued by the Muslim jurists.⁸⁵

If both the parties belonged to different communities, such as a Jew and a Christian, the Muslim court would not decide their cases. In view of Muslim Jurists, all non-Muslim religions constitute one single community (*Ummah*) vis a vis the Islam. So, their cases would be decided by their own tribunal according to their law. But if the non-Muslim parties can not agree among themselves as to the choice of the tribunal and the law, Islamic law shall have the final say.⁸⁶

The article was published in *The Proceedings of the First all India Law Conference* (Hyderabad) in 1945. Its Urdu version entitled “Tasâdum-e-Qawânîn kâ Islâmî Tasawwur aur ‘Amal” was published in *Ma‘ârif* (Azamgarh), Vol. 5, No. 2. Feb. 1946, pp. 85-107.⁸⁷

4. “Siyar yâ Qânûn Bain al-Mumâlik”(Urdu):

It was published in *Fikr-O-Nazar* (Islamabad) in May 1968. The author briefly discussed different aspects of International law such as concept of international law in different civilizations of the world, International law of

Islam, its sources, jurisdiction, principles of diplomacy, and neutrality in Islamic International law.⁸⁸

The contents of the article show that this is a brief version of the *Muslim Conduct State* in Urdu. The article starts with the discussion about distinction between Islamic international law and other forms of international law and shows that Islamic international law is the original international law. It also evaluates the contribution of Muslim jurists and scholars to Islamic international law. In view of the author it is difficult to name the first jurist who has initiated the discourse on Islamic international law. Even if we leave name of the companions of Prophet (SAW). Alqamah Nakhai, Ibrahim Nakhai, Hammad and Ibn Sireen are earliest scholars who contributed to the subject. But, the works of these scholars are not available now Ali Zain al-Abidin's book (*Al- Majmu'a fi al-Fiqh*) contains useful discussion about some topics relating to *Siyar*. Imam Muhammad al-Shaibani's significant contributions to Islamic international law are available in his famous works- *Kitâb al- Siyar al- Saghîr* and *Kitâb al-Siyar al-Kabîr*.⁸⁹

Discussing the subject matter of Islamic international law, the author points out that Islamic international is to be applied to non-Muslim or aliens. Highlighting the opinion of Muslim jurists on strangers, the work mentions that all non-Muslims foreigners or resident of Muslim state constitute one nation and all Muslims are brothers and are considered one nation. So, Islamic international law will applied to all non-Muslim whichever they residing in Muslim state or non-Muslim state.⁹⁰

The article examines the principles to be followed in case of peace, hostility and neutrality. Discussing the evolution of principles of Islamic international law, the author observed that basically there should be only one Muslim state in the whole world. If the Ka'bah of all Muslims is one. *Qur'ân* is one, then their ruler should be also only one. This is also possible that more than one Islamic state co-exists at a given time. In this connection the author stated that when the king of Abyssinia died and news reached to Prophet (SAW), a funeral prayer was offered by Prophet (SAW). It shows that he was Muslim but was sovereign in practice. Half sovereign states also existed during Prophet's era. Oman was ruled by two sons of Jalandi (Jaifar and 'Abd). Prophet sent them a letter asking them to embrace Islam and retain their kingdom and if not, they will be conquered. Both embraced Islam. After this Prophet (SAW) sent Amr Ibn 'As as his agent to Oman.⁹¹

It is also clarified by the author that the non-Muslim citizens (*Zimmî*) of Islamic state will be treated by their own law. Non-Muslims travelers who reside in Islamic state with the permission of government, they will be also treated according to their personal law. The work emphasized that there was no difference between superior and ordinary man in Islamic studies. In Islamic law a ruler is considered under the jurisdiction and he is not free to do anything. Many examples are available from the Islamic history that the rulers were called in the courts if needed.⁹² With regard to the diplomacy, the author thought that diplomacy was very old in human society but the permanent diplomacy was established by Muslims. He cited the example of Abbasid

Caliphs. They had sent their emissaries to different independent states and vice versa.⁹³

In view of the author the main objective of diplomacy is to establish peaceful relations of one state with another. For this purpose, treaties are also concluded which Muslims are bound to follow. If one opposes it, he will be sinful. Discussing the concept of war in Islam, the author says that it is a medicine and last treatment to eliminate the diseases of the society. It is evident from the Prophet's life that the war was waged only for self-defence and eradication of mischief. In this connection, the work also deals with the principles of permitted and forbidden actions during the war.⁹⁴

Defining the neutrality, the author pointed out that the *Qur'ân* and *Hadîth* used the term *I'tizâl* for the neutrality. It was also clarified that the war could be waged anytime by terminating the neutrality but war can not be waged without announcing the termination of the treaty and inviting enemy state for war.⁹⁵

It is quite clear from above discussion that the works of Dr. Muhammad Hamidullah covers all important aspects of Islamic jurisprudence. The works also critically examined the works of early jurists and their role in the development of Islamic law. Dr. Hamidullah also played a pioneer role to elaborate *Wathâ'iq-e-Madînah*. He rightly said that the Charter of Madinah was first written constitution of first Muslim independent state (Madinah) in the world in which every citizen of pluralistic society was given the rights. These rights also have been discussed by the author in detailed way. It is also

important that Dr. Hamidullah showed that the system of insurance was found in Prophet's period. The works also emphasized on the importance and scope of *Ijتهاد*. The work also gives the method of *Ijتهاد*'s application in modern period. Dr. Hamidullah also critically examined the influence of Roman law on Islamic law. There are three conditions of mutual relation between two countries- peace, hostility and neutrality. The works of Dr. Hamidullah on Islamic international law provides rules of *Sharî'at* to maintain the relations in these three conditions. The work also has given the evidences of neutrality from the *Qur'ân* and *Hadîth* and proved that Islam has given place to neutrality from its emergence.

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Chapter - 4

**Dr. Muhammad Hamidullah's
Views on Islamic Law**

Dr. Muhammad Hamidullah's Views on Islamic Law

1. Definition of Law:

Dr. Muhammad Hamidullah defines the law as “the knowledge of what is for and upon one”. In other words, the law signifies science of the rights and obligations of man.¹ At another place, he says that law means rule of conduct. But he further stated that every rule of conduct could not be part of law such as people do something under compulsion of their rulers, people act deliberately which are related to their own personal life and does not directly leave impact on the life of others, men act differently among themselves in their capacity of reasoning and choosing of an action etc.²

2. Islamic Conception of Law:

In view of Dr. Muhammad Hamidullah, the Islamic conception of law may be derived from the Quranic verse:

أَلَمْ تَرَ كَيْفَ ضَرَبَ اللَّهُ مَثَلًا كَلِمَةً طَيِّبَةً كَشَجَرَةٍ طَيِّبَةٍ أَصْلُهَا ثَابِتٌ وَفُرُوعُهَا فِي السَّمَاءِ (إبراهيم / ٢٤)

(Seest thou not how Allah sets forth a parable? a goodly word like a goodly tree, whose root is firmly fixed, and its branches (reach) to the heavens).³

In other words, the source of Islamic law is a small seed but the tree which sprouts forth from it reaches the sky and its branches cover everything. If we

consider the *Qur'ân* and *Hadîth* as the root or the seed, we shall see that the tree sprouting forth from it, has become so strong with all its sprawling branches, that it is able to meet all human requirements till the end of time.⁴

3. Philosophy of Law:

Discussing the origin of law with reference to the Muslim jurists, Dr. Muhammad Hamidullah observed that the things may be divided mainly into two categories: good and evil. He also says that the man must always do what is good and keep away from what is evil and take special care of the intermediate stages like plausible, permissible and dislike.⁵

In materialistic world where everything is being changed and developed with time, it is often impossible to find out unmixed goods from mixed up material, sometimes, the things contains good and evil material. At many places, it is also possible to say that a given act contains neither good nor evil. So, what should be way to adopt unmixed good or abstain unmixed evil? In this situation, Dr. Muhammad Hamidullah says that predominance will decide the preference: a matter of predominant good will be recommended (*Mustahab*) and one of predominant evil discouraged (*Makrûh*). He also pointed out that, all divine orders are not of same category and he divided these orders of Islamic law into five categories.

1. Unmixed good will be ordained as an obligatory duty (*Fardh*)
2. Unmixed evil will be ordained as an obligatory prohibited (*Harâm*)

3. A matter of predominant good will be recommended (*Mustahab*)
4. One of predominant evil will be discouraged (*Makrûh*)
5. The matter where good and evil are equal or where one is unable to see either good or evil, law will leave it to the discretion and choice of the individual to act or not to act.⁶

4. Features of Islamic Law:

Dr. Muhammad Hamidullah has discussed important features of Islamic law. In his opinion the characteristics of Islamic law may be given as:

1. The Islamic law is based on the commands of Allah and it is quite different from man-made law. No human being is entitled to change it.⁷
2. Islamic law comprehends all aspects of human life. It deals with belief, prayers (worships) as well as society, politics, economics, criminal law and International law.⁸
3. Every action of material life which is being discussed under Islamic law is a means to achieve the spiritual value. For example, the worship of Allah is manifestation of relation between the worshipper and Allah and this action which is governed in Islamic law is a means to seek spiritual advancement. In the same way, payment of *Zakât* shows relation between man and man, and this is also the means to seek spiritual value. Moreover, following the orders of a ruler is not only the obedience of the ruler but also means of acceptance of order of Allah and this action would bring reward of Allah for him.⁹

4. The scope of Islamic law is quit wide enough and its provisions are worthy to be applied in every period till the end of this world. The principle that makes it dynamic is *Ijtehâd* which has the sanction of the Prophet Muhammad (SAW) as given in the *Hadîth* of Hazrat Muaz Ibn Jabal(R.A.).¹⁰
5. The institution of Islam had never been under the exclusive control of ruler. It was actually under the jurisdiction of jurists or experts of Islamic law. Every jurist was required to express his opinion or deliver judgments in accordance with the *Qur'ân* and *Hadîth*. If he could not find the requisite guidance in any of these sources, he was permitted to decide cases through his own discretion or *qiyâs*.¹¹

If legislation or law-making had been under the purview of state or government, it would have resulted in a very complicated situation. In that case he says, Islamic law would have been influenced by the political requirements or expediency of the state. Suppose, one is the law minister, he will attempt to enact the law under the requirements of government. Since, he is in ruling party: his party members would not oppose his action. As a result of which, the law will be affected by the opinions of majority. However, in Islamic law every jurist, as stated earlier, is free to give his views. If a person express his views, it is easier for other person to criticize him and give a different opinion. The law made on the basis of this free discussion will be beneficial for government as well as its subjects.¹²

He further states that Islamic law governs both aspects of human life-material and spiritual. This is evident from the fact that the command for performance of prayer and payment of *Zakât* is given in the Holy *Qur'ân* in a single verse:

فَأَقِمْ وَجْهَكَ لِلدِّينِ حَنِيفًا ۚ فِطْرَةَ اللَّهِ الَّتِي فَطَرَ النَّاسَ عَلَىٰ سَبِيلٍ مَّبْرُورًا (المجادلة / ١٣)
(Establish service of worship and pay the tax, *Zakât*).

This means that when Islamic law ordains for the worship of Allah, at the same time, it also prescribes rules for paying *Zakât*. In short, we can say that Dr. Muhammad Hamidullah gives two main sections (spiritual and material) of Islamic law and in these two sections, the followings things are discussed.¹³

Spiritual section: - 1. Belief 2. Acts of worship

Material section:- 1. Morals (*Akhlâq*) 2. Social and Economic Transaction¹⁴

5. Principles of Islamic Jurisprudence (*Usûl al-Fiqh*):

In view of Dr. Muhammad Hamidullah, *usûl al-Fiqh*, which literally means root or principles of *Fiqh*, may be defined as the knowledge of science of those rules which directly or indirectly provide guidance to the science of *Fiqh*. The *usûl-e-fiqh* discusses in detail the nature of sources as well as methodology of deriving legal points from them. The other problems which are dealt with in *usûl-e-fiqh* are: Who is real legislator? How laws of Islam are being formulated? Whether these can be changed, amended or abrogated or not?¹⁵

6. Legislation and Amendment in the Law:

As regards the administration of justice, Dr. Muhammad Hamidullah is of the opinion that it is based on two judicial officials: *Qâzi* (Judge) and *mufti* (Jurist-consult). The *mufti* gives legal opinion about the concerned or disputed case and the *Qâzi* delivers judgment with the regard to the case. *Qâzi* and *mufti* were the main judicial officers of the Islamic state from very early period of Islamic history. Prophet Muhammad (SAW) appointed Abu Bakr (RA) as a *mufti* of Madinah and had told his companions that if any of them wanted to enquire about any legal problems, he should approach Hazrat Abu Bakr. Accordingly, companions used to consult him on legal matters. In cases about which ruling of the Prophet was available, Hazrat Abu Bakr merely reminded the companions about it.¹⁶ Besides, in the same period, *Qâzi* were also appointed outside of Madinah such as Hazrat Muaz Ibn Jabal as *Qâzi* of Yemen.¹⁷

With regard to the changes in Islamic law, Dr. Muhammad Hamidullah was of the opinion that a law can be changed either by the law-maker himself or by an authority higher than him. No person of lesser authority can change the law. If Allah has given a command, He alone can change it. If the Prophet has pronounced a verdict, he or another Prophet can change it and indeed Allah may, but no person (other than a Prophet) can change a rule laid down by a Prophet. He, however, thought that a jurist was entitled to change or reject the legal opinion or verdict of another jurist.¹⁸

He further explains the same point in this way; this is an established principle that a law revealed by Allah can not be changed by anyone except Him. No human being can change it. If he does so, he would be considered an atheist who does not believe in Allah. A Prophet can formulate rule about matters about which no clear guidance is available in the Holy *Qur'ân*. When such law is made up by Prophet at the discretion, it can be subsequently changed only by another Prophet and not any other person of such as king, a jurist or a reformer. But Allah can amend or abrogate a law made by a Prophet.¹⁹

7. Sources of Islamic Law:

With regard to the classification of the sources of Islamic law, Dr. Muhammad Hamidullah does not agree with those jurists who divide sources into two categories- primary and secondary. In his masterpiece, *Muslim Conduct of State*, he simply listed them²⁰ but in *A History of Muslim Philosophy*, he categorized them as divine and other sources²¹. In *Khutbât-e-Bhâwalpur*, he classified them as permanent and temporary.²²In this way, we can say that Dr. Hamidullah has definite view regarding the classification of Islamic sources. Dr. Muhammad Hamidullah has however discussed sources in detailed ways which are summarized here.

The *Qur'ân*:

The *Qur'ân* is the word of Allah. It is a collection and compilation of verses which were revealed from time to time on the Prophet Muhammad (SAW)

through the agency of angel Gabriel, which lasted for about twenty three years. The Prophet is only an intermediary for reception and communication of revelation. His role is neither of an author nor of compiler.²³

The first revelation came in Dec. 609 A.D., when the Prophet was staying in the cave of *Hira*. In this revelation, Allah gave the command to an unlettered person to read followed by praising the pen.²⁴

With regard to the preservation of the *Qur'ân*, Dr. Muhammad Hamidullah points out that there have been two methods of preservation viz: writing and learning by heart (memorizing). In his own words "It was the tradition of the Prophet Muhammad (SAW) that whenever he received the revelation, he called one of his literate companions and copied the text to him. After it, he immediately asked the writer to read out what he had taken down. This idea was to ensure perfect accuracy. Along with this idea, Prophet Muhammad (SAW) also ordered his companions to memorize the revealed text and recite it in daily prayers. So that he may be able to preserve verses of the Holy *Qur'ân* in his mind".²⁵

In addition to the above, Prophet Muhammad (SAW) had also taken special steps for learning and memorizing of the Holy *Qur'ân*. He directed that every Muslim should learn the *Qur'ân* from reliable teacher. Initially, every Muslim was required to read and learn the *Qur'ân* from Prophet. If anyone had a manuscript, he had to recite from it in the presence of Prophet. If the manuscript contained any error, it was corrected by the Prophet himself, if not, then it was certified that the

manuscript was correct and was able to be used for memorizing. When Islam spread and number of Muslims increased, the Prophet appointed a few companions to teach the *Qur'ân*, in whose knowledge of the subject he had full confidence. This process of the reading and learning through the teacher came down to us and is applicable in these days.²⁶

With regard to the *Qur'ân* as source of Islamic law, Dr. Hamidullah was of the opinion that the *Qur'ân* is the first source of Islamic law and has rules for different spheres of human life. Thus, the *Qur'ân* guides man in all walks of life: spiritual, temporal, individual and collective and gives the best rules relating to socio-economic, penal and international matters. The *Qur'ân* is source of guidance for Muslims of every period. Even in the modern period, the problems faced by the Muslims can be solved under the guidelines of this Divine book.²⁷

Hadîth:

Importance of *Hadîth* as a second basic source is well-known. Highlighting this significance of *Hadîth*, Dr. Muhammad Hamidullah has discussed important aspects of *Hadîth*. In his view, *Hadîth* means the saying and action of the Holy Prophet as well as practices of companions (*Sahâbah*) explicitly or silently approved by him.²⁸

With regard to the importance of *Hadîth* in Islamic law, Dr. Hamidullah has quoted following verses of the Holy *Qur'ân*:

يَا أَيُّهَا الَّذِينَ آمَنُوا أَطِيعُوا اللَّهَ وَأَطِيعُوا الرَّسُولَ وَأُولِي الْأَمْرِ مِنْكُمْ (النساء / ٥٩)
(Obey Allah and obey the messenger, and those charged with authority among you);

وَمَا أَنْتُمْ بِالرَّسُولِ فَخُذُوهُ وَمَا نَهَاكُمْ عَنْهُ فَانْتَهُوا (الحشر/٧)
(Whatever the messenger giveth you; take it and whatever he forbiddeth abstain from it);

وَمَا يَنْطِقُ عَنِ الْهَوَىٰ إِنْ هُوَ إِلَّا وَحْيٌ يُوحَىٰ (النجم / ٣-٤)
(Nor doth he speake of his own desire; it is naught save a revelation that is revealed);

لَقَدْ كَانَ لَكُمْ فِي رَسُولِ اللَّهِ أُسْوَةٌ حَسَنَةٌ لِّمَن كَانَ يَرْجُو اللَّهَ وَالْيَوْمَ الْآخِرَ وَذَكَرَ اللَّهَ
كَثِيرًا (الأحزاب / ٢١)

(And verily in the messenger of Allah ye have a good example for him who looketh unto Allah and the last day and rememberth Allah much).

In view of these verses, he thinks that it is obligatory on the Muslims to follow the commands of the Prophet (SAW) just like the commands of Allah Ta'âla.²⁹ He was of the opinion that if any one expresses his belief in the *Qur'ân*, but does not accept *Hadîth* of the Prophet (SAW), he would not be considered a Muslim.³⁰

Moreover, in his view, *Hadîth* has also importance from the point of view

that it explains or gives details of the Quranic command. For example, the *Qur'ân* says

أَقِيمُوا الصَّلَاةَ (Establish the service of worship) without giving the details of manners in which it should be performed. It is in the *Hadîth* that the rules for performing prayer are given in detail. The Prophet (SAW) is reported to have said

صَلُّوا كَمَا رَأَيْتُمُونِي أُصَلِّي

(Look at me, see how I worship, and follow me).³¹

Dr. Hamidullah has divided *Ahadîth* into two major categories: - 1. The personal collections of the companions of the Holy Prophet and 2. Official letters and documents of the Prophet (SAW). The official documents consisted of treaties, directives to tax-collectors and governors, letters of *da'wah* (preaching of Islam), charters, census report and the like.³²

With regard to writing and collection of *Hadîth*, Dr. Hamidullah pointed out that the companions of the Prophet (SAW) had devoted themselves to memorize *Hadîth* and some of them had also recorded many *Ahadîth*. In his opinion, their efforts for preservation of *Hadîth* is more valuable than what was done by the followers of the other Prophets in their times.³³ He did not agree with Goldziher and other orientalisists that the collection and compilation of *Hadîth* was started in 3rd century of *Hijrah*. In his view, such statements are baseless as it is conclusively proved that writing and recording of *Hadîth* had started in the period of the Prophet (SAW) itself.³⁴

It is confirmed that a number of the companions had taken up the work of writing or recording of *Hadith* and prepared their own collections such as the *Sahifah Sadiqah* of Abdullah Ibn Amr Ibn al-‘Âs, which contained about one thousand traditions. This *Sahifah* was taught for several years and many of its *Ahadith* are recorded by Ibn Hanbal in *Musnad*. It is reported that on the request of his disciples, Abdullah Ibn Amr Ibn al-‘Âs used to bring out his collection, and showing them, he would say “that is what I recorded from the sayings and the practices of the Prophet (SAW)”. In the same way, Hamam Ibn Munabbih compiled a collection of 138 traditions entitled *Sahifat al-Sahihah* which had been taught to him by his teacher, Abu Hurairah, the famous companion of the Holy Prophet (SAW). It was prepared in the first half of the first century of *Hijrah*. The text of the same work was edited by Dr. Muhammad Hamidullah and published under the title of *Sahifah Hamâm Ibn Munabbih*.³⁵

Moreover, Dr. Muhammad Hamidullah has also cited several written documents of the Prophet’s time. Some of which were of legal nature such as text of the famous Charter of Madinah, clauses of agreement with different tribes and letters of emancipation of slaves. Significantly, many of these documents are available in the present days also as given by Dr. Hamidullah in his famous work *al-Wathâ’iq al-Siyâsiyah*.³⁶

Practices of Companions of the Holy Prophet:

In view of Dr. Muhammad Hamidullah, the practices of the companions of the Holy Prophet (SAW) are also worthy to be included in the sources of Islamic law because they understood better the meaning of the *Qur'ân* and *Hadîth*. They had observed very closely the practices of Prophet Muhammad (SAW) and were fully aware of the situation in which the Holy *Qur'ân* was revealed. He further stated that if any action of the companions goes against the tradition of Prophet Muhammad (SAW), it should be understood that their action was based on some other tradition of the Prophet Muhammad (SAW) because it is well-known that the companions could never go against the traditions or practices of the Prophet.³⁷

Regarding the differences of opinion among companions on the matters about which there was no clear ruling in *Hadîth*, Dr. Hamidullah says that in such situations preference will be given to the personal eminence of the concerned companion. For example, if there is conflict between the opinion of any of the first four Caliphs and other companions, the preference will be given to the first four Caliphs over the others.³⁸

The Earlier Divine Books:

In view of Dr. Muhammad Hamidullah, the books revealed on the earlier

Prophets are also sources of Islamic law. In support of his view, he quoted verses:

وَتِلْكَ حُجَّتُنَا آتَيْنَاهَا إِبْرَاهِيمَ عَلَىٰ قَوْمِهِ نَرْفَعُ دَرَجَاتٍ مِّنْ نَّشَاءٍ إِنَّ رَبَّكَ حَكِيمٌ عَلِيمٌ وَوَهَبْنَا لَهُ إِسْحَاقَ وَيَعْقُوبَ كُلًّا هَدَيْنَا وَنُوحًا هَدَيْنَا مِن قَبْلُ وَمِن ذُرِّيَّتِهِ دَاوُدَ وَسُلَيْمَانَ وَأَيُّوبَ وَيُوسُفَ وَمُوسَىٰ وَهَارُونَ وَكَذَلِكَ نَجْزِي الْمُحْسِنِينَ وَزَكَرِيَّا وَيَحْيَىٰ وَعِيسَىٰ وَإِيلَىٰسَ كُلٌّ مِّنَ الصَّالِحِينَ وَإِسْمَاعِيلَ وَالْيَسَعَ وَيُونُسَ وَلُوطًا وَكُلًّا فَضَّلْنَا عَلَى الْعَالَمِينَ وَمِن آبَائِهِمْ وَذُرِّيَّاتِهِمْ وَإِخْوَانِهِمْ وَاجْتَبَيْنَاهُمْ وَهَدَيْنَاهُمْ إِلَى صِرَاطٍ مُسْتَقِيمٍ ذَلِكَ هُدَى اللَّهِ يَهْدِي بِهِ مَن يَشَاءُ مِنْ عِبَادِهِ وَلَوْ أَشْرَكُوا لَحَبِطَ عَنْهُمْ مَا كَانُوا يَعْمَلُونَ أُولَئِكَ الَّذِينَ آتَيْنَاهُمُ الْكِتَابَ وَالْحُكْمَ وَالنُّبُوَّةَ فَإِن يَكْفُرُ بِهَا هَؤُلَاءِ فَقَدْ وَكَلْنَا بِهَا قَوْمًا لَّيْسُوا بِهَا بِكَافِرِينَ أُولَئِكَ الَّذِينَ هَدَى اللَّهُ فَبِهِدَاهُمُ افْتَدَاهُ قُل لَّا أَسْئَلُكُمْ عَلَيْهِ أَجْرًا إِن هُوَ إِلَّا ذِكْرَى لِّلْعَالَمِينَ (الانعام / ٨٣ - ٩٠)

(That was our argument which we gave to Abraham (to use) against his people. We raise whom we will degree after degree. For Thy Lord is full of wisdom and knowledge. We gave him Isaac and Jacob, all we guided. And before him, we guided Noah and among his progeny David, and Solomon, and Jacob, and Joseph, and Moses, and Aaron: thus do we reward those who do good. And Zakariya and John, and Jesus and Elias: all in the rank of righteous. And Ismail and Elisha, and Jonas and Lot: and to all we gave favor above the nations: (to them) and to their fathers, and progeny and brethren, we chose them, and we guided them to a straight way. This is the guidance of Allah; he giveth that guidance

to whom He pleaseth, of His servants, if they were to join other gods with Him, all that they did would be vain for them. These were the men to whom we gave the book and (ability of) judgment and Prophethood. if these (their descendent) reject them. Behold! We shall entrust their charge to a new people who reject them not. Those were the (Prophets) who received Allah's guidance. Follow the guidance they received, say no reward for this do I ask of you, this is but a reminder to the nations.)³⁹.

Explaining these verses, he pointed out that the messengers sent by Allah Ta'âla from Hazrat Adam to the last Prophet are to be respected just like the divine command revealed on them. According to him, the provisions of law of past messengers of Allah are to be followed and the last Prophet should also act on them under certain conditions. But, he thought that the earlier revelations would be accepted under the following conditions:

1. The revealed books should have come down to us in the original form.
2. These books must be free from any change or alteration.⁴⁰

Ijmâ':

Dr. Muhammad Hamidullah defines *Ijmâ'* as consensus of the '*Ulamâ'*' (who are expert in Islamic jurisprudence) of any period on any legal problem.⁴¹ He thought that consensus of entire Muslim community was not necessary for the validity of *Ijmâ'*. The consensus of those '*Ulamâ'*' would be valid who have

special interest in Islamic law and are experts in this field. If any one is entitled to give his opinion, it is not necessary that it would be acceptable to other jurists. Another jurist may differ from him. In such situations, a third jurist would decide as to which of the two opinions is acceptable. In this way, in my opinion utmost care should be taken in accepting one's legal opinion.⁴²

In his opinion, validity of *Ijmâ'* is based on the following traditions of the Holy Prophet (SAW)

1 "My people will never be unanimous in error"

2 "The hand of Allah is over the collectivity, and whoever quits it, is sent to hell"

3 "What Muslims agree to be good is also good in the sight of Allah"⁴³

With regard to the change of an earlier *Ijmâ'*, Dr. Muhammad Hamidullah agreed with Abul-Yusr al-Bazdawi(d. 493 A.H./ 1099 A.D.) and Imam al- Razi (d. 606 A.H./ 1209 A.D.), who believe that *Ijma'* is neither permanent nor unchangeable. He says that a new *Ijmâ'* can cancel or abrogate an old one, exactly in the same way as a new Prophet can change the rule of an old one. Because, a rule formulated through consensus is quite different from a law given by Allah or His Prophet (SAW), as the *Ijmâ'* is based on the opinion of human beings and we are not bound to follow it forever. A law made by a man can be replaced by another man-made law which is responsive to the demands of the changing

circumstances.⁴⁴ At another place, he says that where there is a consensus on a certain issue, we accept that it is valid and applicable but it does not mean that no one can oppose it. If someone presents another view with arguments and other jurists accept his point of view, a new consensus comes into being. Thus it replaces the old *Ijmâ'*.⁴⁵

Dr. Muhammad Hamidullah was of the opinion that when Muslim jurists unanimously give their opinion under *Ijmâ'* about any matter, this would have the same validity as "a verse of the *Qur'ân* or the most reliably proved tradition of the Prophet; and whoever denies its authority is to be considered an infidel".⁴⁶ There is enough scope for disagreement with this stand point of Dr. Hamidullah. In my view an *Ijmâ'* even the unanimous one, can not be considered at par with a verse of the Holy *Qur'ân* or *Hadîth* of the Prophet (SAW).

Dr. Hamidullah is of the opinion that the first *Ijmâ'* in Islamic history is related to the consensus of *Sahâbah* for waging war against those who refused to pay *Zakât*. He did not agree with those scholars who considered selection of Hazrat Abu Bakr (RA) as Caliph as the first *Ijmâ'* in Islam because certain companions of the Prophet had expressed disagreement over this selection.⁴⁷

Ijتهاد:

Dr. Hamidullah defines *Ijتهاد* as the opinion of individual jurist expressed about the new problem. The Muslim jurists generally recognized *Ijmâ'* and *qiyâs* as the third and fourth source of Islamic law after the *Qur'ân* and *Hadîth*.

However, Dr. Muhammad Hamidullah considered *Ijتهاد* as the third source of Islamic law. In support of his view, he quoted the *Hadith* of Hazrat Muaz Ibn Jabal in which *Ijتهاد* is mentioned as third source of Islamic law during the lifetime of the Prophet. In this connection, he pointed out that the *Ijتهاد* may be called *qiyās*, *istidlāl*, *istihsān* and *istislah* with slightly different meanings. At another place, he further explains this as, the effort of legislation in case of different new situation made by the jurists is called with different terms, *Ijتهاد* is one, *Qiyās* is another, *Istidlāl* is yet another and so there is also *Istislāh*.⁴⁸ Further discussion on *Ijتهاد* will be made in later Chapter 5- Dr. Muhammad Hamidullah's Perception of *Ijتهاد*.

Treaties:

In view of Dr. Muhammad Hamidullah, the agreement concluded between the Prophet (SAW) and some people or tribes are also to be treated as source of Islamic law. He thinks that if a treaty comes into existence with mutual agreement between the two states, its terms and conditions will remain binding for the duration of the treaty and these will become the part of our law. He writes " In this way, the conditions and obligations agreed upon and accepted by Islamic state would become part of Islamic law and state will be bound to follow them during the operative period of the treaty".⁴⁹

With regards to the cases of conflict between the provisions of Islamic law and any clause of the treaty, Dr. Hamidullah clarified, "in connection with treaties,

it must be recognized once for all, that there are certain rules in Muslim law which are imperatively compulsory and for ever. These can not lose their binding force except when, and so long as, one is in extreme stress and unavoidable necessity. *Except one who is driven by necessity, neither craving nor transgressing, it is no sin for him* (2: 173), is oft-repeated Quranic provision. And hence the maxim (stress renders the forbidden permissible). Again, there are rules in Muslim law though which are not compulsory yet but their execution is praiseworthy." The treaties concluded under stress against the injunctions of Muslim law are binding only so long as the necessity remains.⁵⁰

In view of Dr. Muhammad Hamidullah, it is necessary for the validity of a treaty that it must be in written form bearing the date of writing and enforcement as well as period of remaining operative. Moreover, it must also include solemn promises for giving respect to their contents and enforcement of their clauses and have the signature of the authorized persons.⁵¹ With regard to the amendment or changes in treaty, Dr. Muhammad Hamidullah is of the opinion that it would be valid on the condition that the changes are effected through mutual consent of the parties concerned. No ruler or state is entitled to bring change in the content of a treaty unilaterally.⁵²

Customs and Usage:

Dr. Muhammad Hamidullah has also included customs and usages (*‘Urf-wa ‘Adah*) in the sources of Islamic law, provided that it is not related to an act

forbidden by Islamic law.⁵³ At another place, Dr. Hamidullah argued that at least the good customs could be accepted and bad ones be discarded because the *Qur'ân* constantly commands to follow *ma'âruf* (good known to and recognized as such by everybody) and to abstain from *munkar* (evil known to and recognized as such by everybody). It will be better to quote original words of Dr. Hamidullah:

“The *Qur'ân* constantly commands to follow *ma'âruf* (good known to and recognized as such by everybody) and to abstain from *munkar* (evil known to and recognized as such by everybody). This applies to, or at least includes, custom”.⁵⁴

It is noteworthy here that Dr. Muhammad Hamidullah traces the validity of customs in Islam to the time of Prophet Muhammad (SAW). He argues that during the early period of the Prophet when there were only few revealed verses, the Muslims followed the customs of Makkah.⁵⁵ Secondly, the Prophet kept silent about many practices of his companions based on old traditions and customs. This also showed their lawfulness in view of the Prophet (SAW).⁵⁶ He further states that this is well-known fact that the message of Islam, spread from the Holy cities of Makkah and Madinah, reached every nook and corner of the world and subsequently Muslim states were established in different parts of the Arab and non-Arab regions. As a result of these developments, the Muslims came into contact with the Jews, Christians, Greeks, Spanish, Persians, Buddhists and Hindus and gradually they adopted many local customs and usage. In this

connection, he pointed out that Caliph Umar (RA) had followed some points of Sassanid law especially relating to revenue administration. But as regards the Byzantine laws which were in force in Syria and Iraq, Caliph Umar (RA) thoroughly investigated them and modified those laws which were against the Islamic law.⁵⁷ Thus the validity of customs or usage is conditional. These would not be acceptable in case they contravene any rule of the *Shari'at*. He also clarified that the custom is not a permanent source of Islamic law. Its validity is to be decided by the Muslim Jurists of every period.⁵⁸

Reciprocity:

In the administrative matter, Dr. Hamidullah recognized the practices or rules of other countries as a source of law, if accepted by the Muslim rulers. In this connection, he has given the example from the times of Caliph Umar (RA). It is reported that the governor of Syria enquired from the Caliph Umar (RA) about the rate of custom or transit duties to be collected from the foreigner traders. The Caliph directed him to collect this tax from them at the rate at which Muslims traders are charged in the country concerned. According to Dr. Hamidullah, the principle of reciprocity would be in operation until the government decides to change the prevailing practice or rule.⁵⁹

8. Development of Classical Schools of Islamic Jurisprudence:

Emergence and development of four schools of Islamic jurisprudence have great importance in the history of Islamic law. Dr. Hamidullah has discussed this

issue thoroughly and given his findings in different works especially in the *Khutbât-e-Bahâwalpur*. He thought that the origin of the schools of Islamic jurisprudence may be traced back to some well-known jurists from amongst the companions of the Prophet, particularly Abdullah Ibn Masud (RA) and Abdullah Ibn Umar (RA).⁶⁰

Elaborating the point, he stated that the main centers of *fiqh* were Madinah and Kufah. Madinah had been the homeland of the companions of the Holy Prophet and many of them were well-known as jurists. But later, Kufah also arose as a center of Islamic learning especially *fiqh*. Yemeni people lived there. Yemen was considered the center of ancient civilization. Kufah was also ruled by Persians.⁶¹ After the city was conquered during the Caliphate of Hazrat Umar (RA), the famous jurist Hazrat Abdullah Ibn Masud (RA) was sent there as a teacher. Abdullah Ibn Masud started the teaching of *fiqh* to the people of Kufah. Many students and scholars got benefitted by his lectures (*dars*) including Alqamah al-Nakhai, a Yemeni student, who taught Ibrahim al-Nakhai. Ibrahim al-Nakhai's disciples included Hammad who was teacher of Imam Abu Hanifah. Imam Abu Hanifah came to be known as a distinguished jurist of Kufah. Later, he became famous in the whole Muslim world. He was a non-Arab (Persia) jurist and was founder of Hanafi School of Islamic jurisprudence.⁶²

Another well-known companion of the Holy Prophet was Hazrat Abdullah Ibn Umar (d.692 A.D.) and the Maliki School is ascribed to him. Abdullah Ibn

Umar passed his life mostly in Hijaz and left many disciples. Of them, Nafi (a manumitted free slave) was the most renowned one. He had been teacher of Imam Malik, the founder of Maliki School of jurisprudence.⁶³ Moreover Imam Shafii was the disciple of the Imam Malik and the former himself was teacher of the Imam Ahmad Ibn Hanbal.⁶⁴

9. Imam Abu Hanifah's Contribution to Islamic Law:

There were many jurists in the time of Imam Abu Hanifah such as Imam Malik and al-Awzai, who worked for the codification of Islamic law, but their efforts were individual and limited ones. According to Dr. Muhammad Hamidullah it was Imam Abu Hanifah who first of all paid his attention to the codification of Islamic law. For this purpose, he constituted a committee, which included forty jurists from among his disciples such as Imam Abu Yusuf, Imam Muhammad Shaibani, Imam Zufar, Abdullah Ibn Mubarak, Fuzail Ibn Ayaz, Dawud Ibn Nasir, Waki', Hasan Ibn Ziyad and Hafs. In view of Dr. Hamidullah, these jurists were excellent in Islamic *fiqh* and were capable of exercising *Ijتهاد*. There had been also experts of different subject among them such as scholars of *Tafsir*, *Hadith*, *Sirah*, rhetoric, grammar, linguistics, logic, mathematics and commerce etc.⁶⁵ It is also notable that Dr. Muhammad Hamidullah had discussed in detail the method adopted by Imam Abu Hanifah to codify the Islamic law. He pointed out that Abu Hanifah first used to put the problem before his disciples or members of the committee of the jurists and then asked for their opinion. He

himself also expressed his own opinion and examined the views and arguments put forward by the others. Sometimes discussion continued for several days even for over a month in certain cases. When all the points about the problem became clear, the secretary of the committee Imam Abu Yusuf wrote it down.⁶⁶ Dr. Hamidullah further points out that Abu Hanifah first completed a book on daily prayers (*Salât*) and named it as *Kitâb al-'Arûs*. He continued the work and compiled material on purification (*Tahârat*), economic transactions (*Mu'âmalât*) and inheritance.⁶⁷ In view of Dr. Hamidullah, Abu Hanifah was the first who compiled a monograph on inheritance and wrote on conditional contracts (*Sharâ'it*). He was also first, who rendered Islamic International law as an independent branch of Islamic law under the juridical term *Siyar*.⁶⁸

Another contribution of Abu Hanifah highlighted by Dr. Hamidullah is related to the *Ijtehâd*. Dr. Hamidullah says that Abu Hanifah wrote a book on *ra'e* (opinion), which is known by the name of *Kitâb al-Râ'e* (Book of considered opinion). In this book, he has explained, how to use reason to change law, to understand its intent and to interpret it.⁶⁹

10. Roman Law vs Islamic Law:

Sometimes, it is assumed that Islamic law has nothing in original and that many of its provisions are borrowed from the Roman law. According to some western scholars, when Islam came into contact with Byzantine Empire in Syria and Egypt, it adopted the law of Byzantine. Refuting this claim, Dr. Muhammad

Hamidullah pointed out that the assumption of the influence of Roman law on Islamic law can be ascertained only by a thorough study of the provisions of both the laws, otherwise such statements are unacceptable. In view of his findings, he came to the conclusion that in no way Islamic law borrowed any thing from the Roman law. So, it is a mere conjecture to say that the Roman law influenced Islamic law. But it is surprising that inspite of his categorical denial for the influence of Roman law on Islamic law he held the view that in civil transactions (*Mu'âmalât*), there appeared to be some influence of Roman law. According to him, it may be that during the early encounters of Muslims with the Roman people Syria and Egypt, they would have been influenced by the Roman law prevailed there about mutual transactions. He categorically stated that there was no impact of the Roman law in devotional services (*Ibâdat*), Penal law (*Hudûd*), law of inheritance and the law relating to lending money (*Qarz*), marriage, divorce and legitimacy and international affairs.⁷⁰

Moreover, Dr. Hamidullah also stressed that the contents of the books of Roman law might be divided under three parts- Persons, Property and Acts. On the other hand the works on Islamic law contained, first of all, chapters on *Ibâdat* (prayer, fast, pilgrimage to Makkah and *Zakât*). This is followed by civil transactions (*Mu'âmalât*) and criminal law. No book of Roman law had discussion on *Ibâdat*.⁷¹

Further, there is lot of difference in the terminology of Islamic law and Roman law. For example, the Roman law uses the term *Jus* for law, while under Islamic law the term *Fiqh* is being used. *Jus* means “rights” and the word *Fiqh* means “to know” “to understand”. The Muslims never used the term *jus* to define or interpret law. It may be also kept in view that the Roman law was written or codified in Latin and no Arabic translation of the Latin work on the Roman law was available till the second half of twentieth century. In short, Dr. Hamidullah thought that it was totally wrong to trace the origin of Islamic law to Roman law.⁷²

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Chapter- 5
Dr. Muhammad Hamidullah's
Perception of *Ijtehâd*

Dr. Muhammad Hamidullah's Perception of *Ijtehâd*

Dr. Muhammad Hamidullah believed in the dynamic nature of Islamic law and for this purpose he highlighted the importance of *Ijtehâd* and stressed that in the modern period *Ijtehâd* has enough scope as this is the only mechanism for explaining *Shari'at* attitude with regard to the new problems.

1. Concept of *Ijtehâd*:

It is important to note that Dr. Muhammad Hamidullah has recognised *Ijtehâd* as the third basic source of Islamic law, as has been discussed in previous chapter under the heading of *Ijtehâd*. He defines *Ijtehâd* as the opinion of individual jurist expressed about the new problem. It is also important that disagreeing with other jurists, Dr. Hamidullah does not acknowledge *Qiyâs* as a tool of *Ijtehâd* but he says that these (*Qiyâs* and *Ijtehâd*) are two different principles of jurisprudence. In this connection, he says that there are different methods to make a new law form *Qur'ân* and *Hadîth*, e.g. *Ijtehâd* is one; *Qiyâs* is another; *Istidlâl* is yet another and so also *Istislah*. All these are not synonymous. There are differences among them.¹ But at another place, discussing the sources of Islamic law he says, “*Qiyâs* (analogy), which we also call *Ijtehâd* had already come into existence during the life time of the Prophet”.² With regard to difference between *Ijtehâd* and *Ijmâ'*. He is of the view that *Ijtehâd* is the opinion of a single jurist and *Ijmâ'* is

the consensus of the jurists or experts of law.³ According to him both kinds of *Ijتهاد* (individual *Ijتهاد* and collective *Ijتهاد*; *Ijmā'*) have importance. But he considers second one more important as it is based on the collective wisdom and the decision based on it would be more appropriate solution to the problem. Illustrating this point, he says that in case we do not find solution for a legal problem in the *Qur'ân* and the *Hadîth*. We may make effort by the application of the principles of *Ijتهاد* and *Qiyâs* to find one. If the jurists of any period have consensus of opinion about a particular matter that opinion necessarily becomes more acceptable.⁴

2. Significance of *Ijتهاد* in Islamic Jurisprudence:

Highlighting the significance of *Ijتهاد*, Dr. Hamidullah stated that this mechanism used to be adopted by '*Ulamâ*' and jurists to solve the new problems from juridical point of view and this had contributed to make Islamic law applicable to every period. In fact, the dynamic nature of Islamic law depends upon the application of the principles of *Ijتهاد*. This is well-known that Islamic law is to guide the *Ummah* till the end of this world and this purpose can be achieved only by exercising *Ijتهاد*.⁵ At another place, he pointed out that if Prophet had not permitted *Ijتهاد*, the Muslims would have faced much difficulty with regard to seeking guidance from Islamic law. In his own words:

"If there had been no provision of *Ijتهاد*, the Muslim *Ummah* would have faced great difficulty in finding out the juridical solution for the problem about which no clear ruling was

available in the *Qur'ân* and the *Hadith*. For the same reason Prophet Muhammad (SAW) himself permitted the use of personal reasoning (*Ijtehâd*), in case, a clear rule was not available in the *Qur'ân* or the *Hadith*".⁶

He further argued that if *Ijtehâd* had not been permitted it would have been almost impossible for a jurist, even the greatest one to bring out the *Shari'at*'s attitude towards the new problems. This principle has added to the value of Islamic law and widened its scope. Otherwise Islamic law would have become frozen and lost its applicability to every period. This is only through the use of *Qiyâs* and *Ijtehâd* that the jurists responded to the emerging problems relating to different aspects of human life.⁸

3. Origin and Development of *Ijtehâd*:

It is important to note that Dr. Hamidullah traced the origin of *Ijtehâd* to the period of the Prophet (SAW) while the jurists generally thought that the principles of *Ijtehâd* came to be applied after the Prophet (SAW). In his view, the Prophet (SAW) himself applied the principles of *Ijtehâd* in cases about which no revelation was available. Sometimes it happened that he faced problem about which no guidance was available in the *Qur'ân*. He waited for a revelation about the matter. If he did not receive revelation then he decided the matter in accordance with his own reasoning or laid down rule at his own discretion. Such rule used to be endorsed or changed, as per the suitability, by a subsequent revelation.⁹ There are many relevant examples of this kind. The treatment of prisoners of war after the battle of Badr is one of them. Until then

there was no specific order on the subject in the *Qur'ân*. The Prophet (SAW) decided to release the prisoners on the payment of ransom. The action was followed immediately by the revelation of the famous verse of warning

لَوْلَا كِتَابٌ مِّنَ اللَّهِ سَبَقَ لَمَسَّكُمْ فِيمَا أَخَذْتُمْ عَذَابٌ عَظِيمٌ (الأنفال / ٦٨)

(Had it not been for a previous ordainment from Allah, a severe punishment would have reached you for the (ransom) that ye took).¹⁰

Dr. Hamidullah says that, in these verses, Allah did not approve of the decision based on personal discretion but confirmed it on the basis that He had already decided to change previous law and allowed the Prophet (SAW) to proceed on the basis of new law. On the other hand, if Prophet's decision has been changed immediately by the verse, then law formulated by Prophet would not be valid.¹¹ Moreover, the Prophet had given permission to his companions for doing *Ijتهاد* as it is established by the famous tradition of Hazrat Muaz Ibn Jabal who was appointed the *Qâzi* of Yemen in 9 A.H.. At the time of appointment he was asked how he would decide cases presented to him. He replied that he would do so in accordance with the *Qur'ân*. The Prophet asked how he would decide in case he could not find the relevant rule about the matter in the *Qur'ân*. Hazrat Muaz Ibn Jabal was quick to response that in that situation he would turn to *Sunnah* of the Prophet (SAW). Then asked what he would do, if the necessary guidance was not forthcoming even from that source. Hazrat Muaz replied "I will strive to find the solution through my

reasons and will spare no effort in this regard. In other words, I would use my discretion through inference or analogy and will try to find out a solution. The Prophet was pleased with this answer that he raised his hands towards the sky and said: "O Allah! Your messenger is happy at the grace you have bestowed on his messenger (i.e. Muaz Ibn Jabal).¹² This is enough to prove that the Prophet (SAW) permitted his *Qâzîs*/ governors to exercise *Ijtehâd* in deciding the new cases. Sometimes, *Qâzî* or governor took the decision on their own discretion in a particular case and then they informed the Prophet about their decision or judgement and he instructed them to work in this way.

Dr. Muhammad Hamidullah also pointed out that the *Sahâbah* were permitted to exercise *Ijtehâd* in case they faced new situation during their journey outside Madinah. Later on, returning to Madinah they used to inform him about their decision. The Prophet used to appreciate their use of reasoning in new cases. If the reasoning was wrong he corrected them. Sometimes two companions of the Prophet (SAW) adopted different legal opinions in the new situation, both (whether right or wrong) would be rewarded as are stated in a *Hadîth*. There are many example of such kind, for instance, two *Sahâbis* took to journey without taking the water along with them. They performed a prayer with *tayammum* in the journey. After covering certain distance, they found water. One *sahâbî* repeated his prayer after taking new ablution with water but other did not. When they met the Prophet and informed him about their separate actions, the Prophet (SAW) not only appreciated them but also commended by saying that you did according to *Sunnah*.¹³

Dr. Hamidullah has further highlighted the contribution of Imam Abu Hanifah to the development of the principles of *Ijtehâd*. In this connection, he has particularly mentioned the constitution of an academy of forty jurists from among his disciples in which every member was allowed to express his opinion freely regarding any matter. Sometimes, discussion lasted for a whole month. When they agreed on a point that was reached; it was noted down, if some disagreed that was also noted down.¹⁴ Keeping in mind the importance of *Ijtehâd*, Imam Abu Hanifah is also reported to have written a book entitled *Kitâb al-Râ'e* (Book of considered opinion) in which he had explained the principles for the use of reason and application of *Qiyâs* to a new problem.¹⁵ Moreover, in the opinion of Dr. Hamidullah, two disciples of Imam Abu Hanifah namely Abu Yusuf and Muhammad Ibn al-Hasan al-Shaibani also played important role in the development of *Ijtehâd*. In the same connection, Dr. Hamidullah also mentioned that Abu Yusuf had written a book called *Kitâb al- Usûl* (the book of principles) which deals with the principles of Islamic jurisprudence (*Usûl-e-Fiqh*). With reference to *Kitâb al- Mu'tamad* of Imam Abul Husain al-Basri, Dr. Hamidullah mentioned that Imam Muhammad had also written a book about the principles of jurisprudence and that it also contained discussion on *Ijtehâd*. But he pointed out that the above mentioned three books of Abu Hanifah, Imam Abu Yusuf and Imam Muhammad on *usûl-e-fiqh* were not available.¹⁶ He has endorsed the opinion of other scholars that the earliest work on *usûl-e-fiqh* which has come down to us was written by al-Shafii, a disciple of al-Shaibani who thought him mainly Islamic jurisprudence.

logic and philosophy.¹⁷ In view of Dr. Hamidullah, his famous work on the principles of Islamic jurisprudence- *Kitâb al-Risâlah*, which was also helpful in evolving the principle of *Ijtehâd*. In this *Risâlah*, al-Shafii discussed importance of analogical deduction as a source of law, methodology of bringing out legal point from the sources as well as employing the principles of *Ijtehâd* in case of emergence of new cases.¹⁸

In reference to the development of the concept of *Ijtehâd* in modern period, Dr. Hamidullah mentioned Sir Abdur Rahim, former judge of Madras High Court who later became President of the Indian Legislative Assembly, and gave account of his contribution to this important aspect of Islamic jurisprudence. He has discussed the subject with reference to the old books of principles of Islamic jurisprudence as well as with the new books of law published from the Europe. He has also attempted to compare the Islamic and the European principles of jurisprudence.¹⁹

It is view of Dr. Hamidullah, the door of *Ijtehâd* was never closed and in every period there had been scholars who exercised *Ijtehâd* and contributed to the development of its principles through their writings.²⁰

4. Conditions of *Ijtehâd*:

Mentioning the scope of *Ijtehâd*, Dr. Hamidullah stated that it was permitted only in those cases about which no clear ruling was available either in the *Qur'ân* or the *Hadith*. In this connection, he quoted the famous *Hadith* of Hazrat Muaz Ibn Jabal which records the Prophet gave permission to Hazrat

Muaz Ibn Jabal for reasoning or the use of his personal opinion only in cases about the *Qur'ân* and the *Hadîth* were found silent. It means that the question of *Ijtehâd* does not arise with regard to the problems which have been solved by the *Qur'ân* or *Hadîth*.²¹

As regards the jurists (*Mujtahid*) entitled to do *Ijtehâd*, Dr. Hamidullah was of the view that it is conditional on certain qualifications. Responding to a question he stated “*Ijtehâd* would be only performed by the jurists who have the knowledge of jurisprudence, not by the general people”. At another place, emphasising the need of *Ijtehâd* he says, “Such assignments can be undertaken only by the experts of principles of jurisprudence. A person who does not have the knowledge of law is not eligible to perform *Ijtehâd*”.²² In addition to the above qualification, Dr. Hamidullah also emphasised that jurists should possess the quality of piety and fearfulness of Allah as it would make him more sincere in exercising *Ijtehâd*.²³

5. Principles of the Application of *Ijtehâd*:

According to the Dr. Hamidullah, there are several ways of finding out the *Shari'at's* attitude about a problem through the application of *Ijtehâd*. Sometime, no particular injunction is available in *Qur'ân* about a problem. But there is ruling with regard to a similar situation. For example, the *Qur'ân* prescribes punishment for theft but there is no particular rule about the theft of shrouds. While giving his verdict about this problem, the jurist will exercise his reasoning and apply the ruling about similar theft to this case also. It is also possible that he would go deeper into the case and would find out some other

rule which may be more suitable to the situation and this process is called *Istihsân*. Besides, in some cases another principle (welfare of the *Ummah*) may be a guiding factor for finding out a solution to a problem. The simple way of analogical deduction would suggest a solution, but another would appear better from the point of view of the welfare of the people and this is called principle of *Istislâh*.²⁴

With regards to the mechanism for solving new problems in modern period, Dr. Hamidullah suggested both kind of *Ijtehâd* i.e. individual *Ijtehâd* and collective *Ijtehâd* (*Ijmâ'*). But he considers second one more important, as it is based on collective wisdom and the decision based on it would be more appropriate. He illustrated it in these words:

“*Ijmâ'* means that in case we do not find a solution to a problem in the *Qur'ân* and the *Hadîth*, we make effort by *Ijtehâd* or *Qiyâs* to find the solution. If jurists of that period reach an agreed position on a particular question, this position necessarily becomes more acceptable or more beneficial”.²⁵

Differentiating between *Ijtehâd* and *Ijmâ'*, he points out “*Ijtehâd* and *Ijmâ'* are same things but difference is that *Ijtehâd* is the opinion of single jurist and *Ijmâ'* is consensus of jurists or experts of law”.²⁶

Dr. Hamidullah not only made earnest plea for the application of *Ijtehâd* in the modern period but he also explained details of its application. He was of the view that every jurist and even expert of the law should be free to express his opinion in the exercise of *Ijtehâd*. According to him even the opinion of a

common man may be also sought as was done in the period of pious Caliphate. But it does not mean that the opinion expressed by anyone should be necessarily accepted. Other may oppose it. Acceptance of the opinion will depend only on collective wisdom of the jurists. He also emphasised that every one would be free to express his opinion but as regards acceptance of the opinion, it would be done after carefully examining that which opinion is more beneficial and more acceptable to the people. Similarly he was of the view that the jurists of every period are required to express their opinions about the new problems of socio-economic life of people so that they may find out *Sharî'at* attitude about them after seeking guidance from the jurists.²⁸

6. Contribution of Dr. Muhammad Hamidullah to the Development of the Institution of *Ijtehâd* in Modern Period:

Dr. Hamidullah, as pointed out earlier, gives more importance to collective *Ijtehâd* (*Ijmâ'*) in comparison to individual *Ijtehâd*. He made strong place for the establishment of an institution at world level to facilitate the collective *Ijtehâd* or *Ijmâ'* with which all the famous jurists would be associated. They may express their opinions about the emerging problems keeping in view the goodness of the whole Muslim community. His views on institutionalized *Ijtehâd* may be given here in his own words:

“An association of jurist should be established in every country with its headquarters at any place. It will be exclusively a Muslim association. Its secretariat will receive references from member countries. If it considers a certain issue important

enough for Muslim jurists of the world to express their views on it, the secretariat will circulate the question to all its branches in the Muslim and non-Muslim world. The branches of the secretariats will forward a copy of the question to all Muslim jurists in their respective areas with the request for a reasoned reply. On receipt of replies they will be sent to the headquarters with an analysis indicating whether the replies are unanimous or not. In the event of the schism among some jurists, the notes should contain detailed arguments of the person or the group concerned.²⁹

The common language of such an international institution should be Arabic, but on a local level each country could use its own language. For example, if a question is referred to Pakistan, its jurists may give their opinion in Urdu or some other language, but the reply sent to headquarter should be in Arabic so that all the jurists of the Muslim world could easily avail of it. In my view a good jurist should have good knowledge of Arabic.³⁰

On receipt of replies from all the branches a suitable announcement should be made in case unanimity has been achieved on a point. In case of difference of opinion, a summary should be prepared and circulated to all jurists. This will enable them to consider the reasoned point of view of all; and those who dissent might consider it worth and may change their views.

When the replies are received for the second time in the headquarters one would be able to finally determine the issues on which a consensus has been reached as well as those on which differences continue to persist. We will be able to find out the majority view expressed on the differences involved. All these reports should be published in a volume which should comprise all the replies received together with the detailed arguments in favour of or against the proposition”.³¹

Obviously, it is not reasonable to make all Muslim jurists or experts of Islamic law bound to remain permanently at one place. So, Dr. Hamidullah says that jurists may assemble for a conference for a few days but they can not stay there for a long time. If an institution is established it should be easy to avail the expertise of the jurists of the Muslims of the whole world for solving the new problems.³² It is also important to mention here that Dr. Hamidullah says that collective *Ijtehâd (Ijmâ')* has been founded in the period of pious Caliphs. He says, “During the days of pious Caliphs collective deliberation was occasionally resorted for solving a problem. Discussion and debate took place among the people. If a person expressed an opinion, the other criticised it and advanced his own views on the issue. Eventually after having discussed the pros and cons of a problem, people arrived at a conclusion. The process of discussion proved very useful”.³³

From above discussion, it is not clear whether Dr. Hamidullah equated *Ijtehâd* with *Qiyâs* or dealt with them separately. At one place, as stated above.

he has considered them two different principle of Islamic jurisprudence but at the other place he mentioned both of them as the same thing. So, his statement regarding the difference between *Qiyâs* and *Ijtehâd* is confusing. Dr. Hamidullah has not also given a detailed discussion about *Ijtehâd* in any book except *Khutbât-e-Bahâwalpur*, but the book being collection of lectures does not contain systematic study about the issues and development of *Ijtehâd*. Similarly, Dr. Hamidullah has not discussed all the qualifications of a *Mujtahid*. He only expressed his views about this matter in just two or three lines, as mentioned above. Besides, in his discussion on *Ijtehâd* mainly focussed on the contribution of different schools to the principle of jurisprudence.

Moreover, no doubt, the concept of the institutionalized *Ijtehâd* is important and useful from the point of view that it would facilitate to seek the collective opinion of the jurists of the world about the legal problems involving the whole *Ummah*. But it can not be overlooked that the Muslims of every country have their own peculiar problems. So, there should be *fiqh* academy in every country which may deal with the social and economical problems of the country.

Notes and References

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10. Abdullah Yusuf Ali, *The Holy Qur'ân*, Complex for the Printing Press of the Holy Qur'ân, Madinah, 1413 A.H.
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22. Ibid., p. 103 and 151
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27. For more details see, Muhammad Taqi Amini, *Fiqh-e-Islâmi kâ Târîkhî Pas Manzar*, Twentieth Century Islamic Studies Centre, Lahore (n.d), pp. 154-155
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Chapter-6

**Dr. Muhammad Hamidullah's
Juridical Response to the
Problems of Modern Period**

Dr. Muhammad Hamidullah's Juridical Response to the Problems of Modern Period

Dr. Muhammad Hamidullah was one of those eminent Muslim scholars of modern period who not only advocated the application of the principle of *Ijتهاد* to solve juridically the new problems of society, but themselves applied this principle for giving *Shari'at's* attitude towards the problems of modern times. It is noteworthy that the problems responded to by Dr. Muhammad Hamidullah are of varied nature. Broadly speaking, these may be divided into three parts- social, economic and political.

1. Social Problem:

Imâmat of Woman:

It has been also controversial issue among the jurists whether a woman can lead prayer or not, in which men also participate. According to Dr. Muhammad Hamidullah, a woman can lead prayer in rare circumstances, such as, when no man is available who is entitled to lead prayer. In this condition, a woman can lead prayer till a man from the concerned locality memories *Qur'an* as recited in prayers and so becomes capable of leading prayer. To support his view, Dr. Hamidullah quoted a *Hadith* of Prophet Muhammad (SAW) from *Sunan Abi-*

Daud and *Musnad* of Ahmad Ibn Hanbal. It is recorded in *Hadith* that Prophet (SAW) appointed Umm-e-Waraqah, an ansari lady (who had embraced Islam in the early phase) a leader or *Imâm* of a mosque in her locality and that men performed behind her including her *Mo'azzin*. In view of Dr. Muhammad Hamidullah, it was only an exceptional appointment of a lady as *Imâm* by Prophet Muhammad (SAW), but it shows that leading of prayer by a woman is permissible.¹

Polygamy:

This is a well-known fact that polygamy is permitted in Islamic Law. In view of Dr. Hamidullah, Islamic Law does not impose polygamy but only permits under certain conditions. Discussing these conditions, he pointed out that in case a wife fell ill and became incapable of doing household work and husband has no means of employing a maid-servant for this purpose, not to speak of the natural requirements of conjugal life. If sick wife gives her consent to her husband for second marriage and a woman agrees with his proposal, then the polygamy is permitted.²

Thus, Dr. Muhammad Hamidullah considered the validity of polygamy conditional on the consent of first or second wife. He also pointed out that the first wife had right to demand oath or promise from her husband at the time of her marriage that he would practice monogamy. He further clarified that second wife

may refuse to marry a person who already has one wife. No one can force a woman to enter into marriage without her own consent.³

Conversion of Married Non-Muslim to Islam

This is also a controversial issue of legal interest (debated in every age) that if a married couple or one of them embraces Islam and other refuses it. What will be legal position of their marriage? Dr. Muhammad Hamidullah has discussed this problem, in detailed way, juridically and it would be better to give his opinion in his own words.

“If a married couple embraces Islam, their pre-Islamic contract of marriage remains valid in so far as it is compatible with Islamic law. The rest will be annulled. For instance, Parsis practicing *Khuwaidhugadis* and marrying their own sisters or daughters, or animists marrying more than four wives, or marrying without bride-money (*mahr*) or Nairs practicing polyandry and the like can not expect to remain unaffected by Muslim law. The Parsi wife will at once be separated, the polygamous husband will select only four and the rest of his wives will be divorced. The wife without bride money will get a new right to *mahr*, and the polyandrous wife will be separated from all of her husband except one.”⁴

If only husband embraces Islam and wife does not, the case is much more difficult. In this condition, he says that the marriage will be intact if the wife

belongs to community of Divine Books like Christians and Jews and will be tolerated with her religions.⁵ In other condition, if wife does not belong to community of Divine Books, then she will be asked to become a wife of her husband by changing her religion. If she refuses, separations will follow.⁶

In view of Dr. Hamidullah in case a wife who embraces Islam and her husband does not, the husband should also embrace Islam within three months. During this time he cannot continue conjugal relations. If he refuses to convert, separation would follow.⁷

Marriage of Siamese Twin Sisters:-

Dr. Muhammad Hamidullah has also examined juridically the complicated problem of the marriage of twin sisters, who have joint organs like hands, foot, heads and stomach etc. In his view, there are several ways to marry such twin sisters. The marriage may be solemnized after separation of such organs like hands, foot, heads etc. by surgery. Secondly, they may be married with two separate men. But the problem arises when typical organs like stomach can not be easily separated. In this situation, Dr. Hamidullah thought that twin sisters should be married with two separate men. When the husband of one comes, other should cover herself by a sheet. It is more reasonable than their marriage with a single man, because this would mean marriage of a man with two sisters which is forbidden in Islam as the Holy *Qur'an* says:

حُرِّمَتْ عَلَيْكُمْ أُمَّهَاتُكُمْ وَبَنَاتُكُمْ وَأَخَوَاتُكُمْ وَعَمَّاتُكُمْ وَخَالَاتُكُمْ وَبَنَاتُ الْأَخِ وَبَنَاتُ الْأُخْتِ
وَأُمَّهَاتُكُمُ اللَّائِي أَرْضَعْنَكُمْ وَأَخَوَاتُكُم مِّنَ الرَّضَاعَةِ وَأُمَّهَاتُ نِسَائِكُمْ وَرَبَائِبُكُمُ اللَّائِي فِي
حُجُورِكُمْ مِّن نِّسَائِكُمُ اللَّائِي دَخَلْتُمْ بِهِنَّ فَإِن لَّمْ تَكُونُوا دَخَلْتُمْ بِهِنَّ فَلَا جُنَاحَ عَلَيْكُمْ وَحَلَائِلُ
أَبْنَائِكُمُ الَّذِينَ مِنْ أَصْلَابِكُمْ وَأَنْ تَجْمَعُوا بَيْنَ الْأُخْتَيْنِ إِلَّا مَا قَدْ سَلَفَ (النساء / ٢٣-٢٤)

(Prohibited to you (for marriage) are: your mothers, daughters, sisters, father's sisters, mother's sisters, brother's daughters, sister's daughters, foster mothers (who gave your suck), foster sisters, your wives mothers, your step-daughters under your guardianship, born of your wives to whom ye have gone in, no prohibition if ye have not gone in- (those who have been) wives of your sons proceeding from your loins, and two sisters in wedlock at one and the same time, except for what is past).

In view of such directive, Dr. Muhammad Hamidullah does not agree with those scholars (Like Maulana Maududi) who are of the opinion that the twin sisters would be married to a healthy man.⁸

Women in Army:

This is generally held that a woman can not join any military service mainly due to the prohibition of men and women working together at the same place. Dr. Muhammad Hamidullah was of the view that a Muslim woman is allowed to join army, because it is well-known that in the period of the Prophet (SAW) women took part in the battles and performed duty of nurses, transporters of wounded and the dead, cooks, water-carriers, attendants and in some emergent cases they worked even as actual fighters. He further says that during the battle of Qadisiyah (in the year 14 A.H.) women dug grave to bury the dead. Besides, Dr. Muhammad Hamidullah does not agree with those scholars who insist that only

ladies of upper age can join the army service. He argues that Hazrat Aishah (RA), the holy wife of the Prophet Muhammad (SAW), was very young when she accompanied him in the battle of Uhad and attended to the wounded *Sahâbis* along with other lady volunteers.⁹

With regards to the position held by Hazrat Aishah (RA) in the battle of Jamal, he was of the view that woman are permitted to take up administrative responsibilities in Army, because Hazrat Aishah (RA) commanded the army on the occasion of the above battle.¹⁰

With regard to the use of modern weapons by women during war. Dr. Hamidullah was of the view that they can use weapons as it is established from the cases of the period of Prophet Muhammad (SAW) and pious Caliphs. Citing the cases he states that the wife and daughter of famous *Sahâbi* Khalid Ibn Walid got fame for horsemanship. In the battle of Qadisiyah a band of ladies themselves volunteers, armed with thick sticks, lances, arrows etc.¹¹

Co-Education:

The co-education is also a controversial issue among the scholars for several years. Dr. Muhammad Hamidullah also has given his opinion regarding this issue. According to him, it is better that there should be separate colleges and schools for girls and boys. If not possible, Islam also gives permission to learn together where boys and girls could have separate seats. In support of his view, he says that in

early age of Islam both men and women would gather in mosque where they sat at different places, but they had access to the place from where the Prophet (SAW) addressed the people.¹²

Non-Muslims and their Places of Worship:

Dr. Muhammad Hamidullah has also discussed the rights of non-Muslims in an Islamic state from juridical point of view. He was of the opinion that their places of worship would be protected and it would be unlawful to damage or destroy them. They would be also allowed to observe their religious practices. In support of his view, he quoted tradition of Prophet Muhammad (SAW). "After establishing Madinah as Islamic state, Prophet Muhammad (SAW) gave full right to the non-Muslims to perform prayers on their belief at their place of worship".¹³

But in case of war with non-Muslims, Dr. Muhammad Hamidullah was of the view that their religious places would be at the discretion of conquerors or ruler. They can leave it intact, can convert them into Muslim religious places and they may also destroy them. In this connection, he says that after the conquest of Makkah the Prophet Muhammad (SAW) had converted *Ka'bah* into a place of worship for the Muslim. However in case of Najran, the Prophet (SAW) not only handed over churches to the Christians of that place but also guaranteed full security for their churches and their priests. However, in relation to Taif, Prophet (SAW)'s attitude was different as its idolatry was destroyed.¹⁴ In the same way, he

observed that during pious caliphate action of conquerors with regard to the non-Muslims places of worship differed in different conditions. So, it may be said that there had been no fixed rule about the religious places of non-Muslims. It depended on the situation and decision of rulers of a particular period. But he clarified that the decision by the Caliph about these places of worship would be binding for the Muslims of later period, and none would be permitted to change it.¹⁵

Apostasy:

It is often discussed and debated that Islam stands for tolerance and does not allow compulsion for embracing Islam, but it prescribes death sentence for apostates, which goes against the freedom of religions and moral behavior of human beings. Responding to this issue, Dr. Muhammad Hamidullah pointed out that the punishment of death sentence for apostates is not due to change of religion but because of the political treachery. He, further, clarified that no government of the world likes treacherous persons. Instead, they are dealt with sternly and given severe punishment. None, of course, can be forced to embrace Islam but if a person becomes a member of Islamic community, his treachery can not be tolerated and so he will be awarded punishment of death sentence. Moreover, the punishment will not be given immediately after his treachery against Islam. He will be given opportunity to think over the matter and will be persuaded to return back to the fold of Islam. If he does not agree for the change then he will be

subjected to the said punishment.¹⁶ Dr. Muhammad Hamidullah also emphasized that there are many persons who may be exempted from or given leniency in the prescribed punishment of apostasy such as delirious, a melancholy and perplexed man, a minor, intoxicated person, one who had declared his faith in Islam under coercion and a person whose acceptance of Islam is not established. Besides, a woman would not be condemned to death, but imprisoned. An old man from whom no offspring is expected may be also exempted.¹⁷

Legal Profession in View of Islamic Law:

As regards lawfulness or otherwise of the profession of lawyer from Islamic point of view, Dr. Muhammad Hamidullah was of the opinion that those things which have not been declared forbidden (*Harâm*) are permissible in Islamic Law, even though the things did not exist in the Prophet's time. He argued that after listing a few forbidden things, the Holy *Qur'ân* says that the rest are permissible.

حُرِّمَتْ عَلَيْكُمْ أُمَّهَاتُكُمْ وَبَنَاتُكُمْ وَأَخَوَاتُكُمْ وَعَمَّاتُكُمْ وَخَالَاتُكُمْ وَبَنَاتُ الْأَخِ وَبَنَاتُ الْأُخْتِ
وَأُمَّهَاتُكُمُ اللَّاتِي أَرْضَعْنَكُمْ وَأَخَوَاتُكُم مِّنَ الرَّضَاعَةِ وَأُمَّهَاتُ نِسَائِكُمْ وَرَبَائِكُمُ اللَّاتِي فِي
حُجُورِكُمْ مِّن نِّسَائِكُمُ اللَّاتِي دَخَلْتُمْ بِهِنَّ فَإِن لَّمْ تَكُونُوا دَخَلْتُمْ بِهِنَّ فَلَا جُنَاحَ عَلَيْكُمْ وَحَلَائِلُ
أَبْنَائِكُمُ الَّذِينَ مِنْ أَصْلَابِكُمْ وَأَن تَجْمَعُوا بَيْنَ الْأُخْتَيْنِ إِلَّا مَا قَدْ سَلَفَ (النساء / ٢٣-٢٤)

(Prohibited to you (for marriage) are: your mothers, daughters, sisters, father's sisters, mother's sisters, brother's daughters, sister's daughters, foster mothers (who gave your suck), foster sisters, your wives mothers, your step-daughters under your guardianship, born of your wives to whom ye have gone in, no prohibition if ye have not gone in- (those who have

been) wives of your sons proceeding from your loins, and two sisters in wedlock at one and the same time, except for what is past).

So, the law profession may be included among those things which are permissible. He also stated that *Qur'ân* has referred to the advocacy in the verse:

هَآأَنْتُمْ هَؤُلَآءِ جَادَلْتُمْ عَنْهُمْ فِى الْحَيَآةِ الدُّنْيَا فَمَنْ يُجَادِلُ اللَّهَ عَنْهُمْ يَوْمَ الْقِيَامَةِ أَمْ مَنْ يَكُونُ عَلَيْهِمْ
وَكَيْلًا (النسآء / ١٠٩)

(Ah! These are the sort of men on whose behalf ye may contend in this world; but who will contend with Allah on their behalf on the Day of Judgment, or who will carry their affairs through?).¹⁸

In this connection, he further clarified that a lawyer is required by clients only to plead his case before the court from legal point of view or to present the case in legal terminology. So, there is no harm in seeking the help of a lawyer.¹⁹

Organ Transplantation:

Donation of blood and organs of the body have become essential feature of the modern medical system. The problem was also examined by Muslim jurists and 'Ulamâ' from the point of view of Islamic law. Dr. Muhammad Hamidullah was of the opinion that there is no bar in Islam for donation or transplantation of organs of a person, if it is being used to save life of a person. Similarly, one is allowed to use extra organ or blood of a person with his permission but not by compelling him for such, obviously it will be treated as a charity. If it is done by

compulsion, it will be considered violation of human rights and Islam does not permit it.²⁰

Games of Chance:

In view of Dr. Muhammad Hamidullah games of chance like lotteries, races of horses, backgammon, ludo, chess etc are sources of germination of many social evils. It leads to the exploitation of poor and accumulation of ill-gotten wealth in a few hands. Discussing the legal position of these games, Dr. Muhammad Hamidullah quoted the following verse:

يَا أَيُّهَا الَّذِينَ آمَنُوا إِنَّمَا الْخَمْرُ وَالْمَيْسِرُ وَالْأَنْصَابُ وَالْأَزْلَامُ رِجْسٌ مِّنْ عَمَلِ الشَّيْطَانِ (المائدة / ٩٠)
(O ye who believe! Intoxicants and gambling, sacrificing to stone. And (divination by) arrows are an abomination of Satan's handiwork).

In his view, such games are totally prohibited in *Shari'at* because of involving one-sided risk.²¹

Music:

It is generally held by Muslim scholars that Islam does not permit music. But Dr. Muhammad Hamidullah differs from such scholars. In his view, music itself is not forbidden in Islam but what is forbidden is that the music should not be played during prayer or music should not be used in such entertainments which develop moral decadent. He has attempted to prove permissibility of music by giving examples from the period of Prophet (SAW). He says that once, on returning from a marriage which was celebrated by Hazrat Aishah's relatives. Prophet

Muhammad (SAW) told Hazrat Aishah (RA) that there was no music in wedding party of your relative and he had expressed surprise at this.²² Another example, he given in this regard, is related to the farewell pilgrimage of Prophet (SAW). The Prophet was staying in Mina and a few girls were playing on Duff (a musical instrument) in front of Aishah's tent. Abu Bakr (RA) came to call on the Prophet and scolded the girls who were busy in music. The Prophet said to Abu Bakr, "It is the day of 'Id". In view of Dr. Muhammad Hamidullah it may be inferred from this event that the girls were not doing any impermissible thing. Accordingly, he held the view that music is not prohibited in Islam, provided it does not obstruct performance of prayer or observation of any other obligation.²³

2. Economic Problems:

Nisâb of Zakât:

With regard to the minimum prescribed limit of wealth (*Nisâb*) for the obligation of *Zakât*, Dr. Muhammad Hamidullah agreed with the stand point of other Muslim scholars that what was fixed (200 dirham) in Prophet's time could not be changed even in the changed situation. But the matter which is required to be examined in relation to the fixation of *Nisâb of Zakât* in the present days is what the value of dirham was in term of rupee in Prophet's time? and what was purchasing power of dirham at that time? It means, how much works was done in one dirham then and how many rupees are required for same work at now? For example, in Prophet's time, the salary of a governor was only 30 dirhams. It

means these dirhams were sufficient for the livelihood of a governor's family and his servants etc. At present, how many rupees are required for such livelihood? keeping these points in mind, Dr. Muhammad Hamidullah says "that such amount of wealth should be obligatory in place of 200 dirhams which will be sufficient for a common man to lead a stable life even in the case of inflation, recession etc".²⁴

Expenditure of *Zakât*:

An important problem relating to the *Zakât* is who are legally entitled to be paid *Zakât*. In this respect, he quoted the verses:

إِنَّمَا الصَّدَقَاتُ لِلْفُقَرَاءِ وَالْمَسْكِينِ وَالْعَامِلِينَ عَلَيْهَا وَالْمُؤَلَّفَةِ قُلُوبُهُمْ وَفِي الرِّقَابِ وَالْغَارِمِينَ وَفِي

سَبِيلِ اللَّهِ وَأَبْنِ السَّبِيلِ فَرِيضَةً مِّنَ اللَّهِ وَاللَّهُ عَلِيمٌ حَكِيمٌ (التوبة / ٦٠)

(Alms are for the poor; and the needy; and those employed to

administer the (funds): for those whose hearts have been (recently) reconciled (to truth); for those in bondage and in debt; in the cause of Allah; and for the wayfarer (Thus is it) ordained by Allah and Allah is full of Knowledge and Wisdom).

Explaining the meaning of this verse, he pointed out that the *Zakât* is to be paid to all those persons mentioned in this verse and the same order of preference is to be maintained as is evident from the verse. Further, he has given his own juridical explanation to the terms used for the deserving persons in the *Qur'ân*. In his view, *Al-'Âmilîn* stand for those employed for the collection and distribution of *Zakât*. *Al-Mu'allafah Qulûbuhum* means those people whose hearts needed to be

won over. He thought that the ruler is authorized to use the amount of this fund for the propagation of Islam as well as for the work of public interest.²⁵

In his opinion, *Al-Riqāb* (Slaves) includes the slaves who are found in Islamic realm as well as those Muslim or non-Muslim citizens of an Islamic state who have been captured by an enemy and for their emancipation, ransom is to be paid. With regard to *Al-Ghārimīn*, he stated that the term is to be applied to those people who were once prosperous but were rendered destitute owing to some serious financial loss or natural calamity or certain emergent problems. Interpreting the term “*fi Sabil al-Allah*” (in the way of Allah), he pointed out that the amount of this head of *Zakāt* may be spent for the defence and security of the country and the maintenance of Army. The amount of *Zakāt* can be spent on military administration including payment of salaries to soldiers, purchase of arms and other military requirements. In his opinion, *Zakāt* under the above head may be used to build mosques, *caravan sarais* and schools under this category. But this point is not supported by other ‘*Ulamā*’ and jurists. Many of the ‘*Ulamā*’ of modern period are of the opinion that the amount of this head is to be spent for the *Da’wat* work and service to the cause of religion. He further pointed out that the amount of the head of *Ibn al-Sabil* may be spent for providing hospitality: boarding and lodging to travellers.²⁶ It may include building of roads and providing security for travellers. In his view, other people can also avail these facilities. Besides, he considers no legal bar in spending this amount for the

market administration and the related works such as preventing black marketing and making arrangements for supply of healthy food to people etc.

With regard to *Al-Âmilîna 'Alaiha*, he was of the opinion that all officials of revenue department will come under this category. They may include collectors of *Zakât*, accountants, auditors, supervisors. In his view, they will be given salaries from the amount of *Zakât*.²⁷

In relation to *Al-Mu'allafah Qulûbuhum*, he agreed with Abul Yala al-Farra, who divided them into following four categories:

1. Those people, who are paid to help Muslims
2. Those, who are paid to persuade them to refrain from harming Muslims.
3. The third category consists of those who may be provided financial assistance in order to soften their attitude towards Islam.
4. Those who are provided funds to soften the attitude of their near relatives, families and tribes towards Islam.²⁸

Zakât and non-Muslims:

It is also an debatable issue about the *Zakât* in modern period that whether it can be given to non-Muslims or not? Generally it is held that the amount of *Zakât* is exclusively reserved for deserving Muslims. Dr. Muhammad Hamidullah held different view. He thinks that it is legally permissible to pay *Zakât* to non-Muslim.

In support of his view, he quoted a tradition in which it is recorded that once Caliph Umar (RA) came across a person on a street of Madinah, who was begging. He was shocked to see the beggar and asked for reason of begging. He replied that he was a Jew who earlier used to pay *Jizyah*. Now, he was too old and could not do any work. So, he was begging. On this reply, Umar was deeply moved and immediately directed that no *Jizyah* should be charged from him and that he should be given a daily stipend from *Zakât* fund.²⁹

He further stated that several companions of Prophet Muhammad (SAW), such as Hazrat Umar, Hazrat Zaid Ibn Thabit and Hazrat Abdullah Ibn Abbas were of the view that in the verse (the above cited), *fuqarâ'* stands for poor among Muslims and *Masâkin* signifies non-Muslim poor subjects of the Islamic state. Thus according to them, the *Zakât* may be given to non-Muslim, provided they come under the category of *Masâkin*.³⁰

Imposition of Additional Taxes:

In every period, the government requires resources for the development work or the work of public welfare. Sometimes, prescribed sources of income are not sufficient to meet the expenditure of these works. In such situation, the question arises whether the Islamic state is authorized to impose the new taxes to generate the additional resources. In view of Dr. Muhammad Hamidullah, the government has right to levy additional taxes under the category of *Nawâ'ib*. which means

taxes imposed temporarily to meet emergent requirements. In his view, such taxes would be temporarily realized till the fulfillment of the emergent requirements.³¹

Commercial Interest:

The Muslim jurists have different opinion with regard to the connotation of *ribâ'* and application of this term to commercial interest. A few of them are given below:

Abdullah Ibn Ahmad Ibn Qudama al- Maqdisi (a Hanbali Jurist) says, “*Ribâ'* is of two kinds : *ribâ' al-fadl* and *ribâ' al-nasia*. The prohibition of *ribâ' al-fadl* involves the exchange of one commodity against itself and covers all commodities which are exchanged by volume or by weight regardless of whether the quantity exchanged is small, like one date for two dates or one grain for two grain. *Ribâ' al-nasia* is involved in the exchange of two commodities one of which is not the price”.³² Shah Waliullah says, “Remember that *ribâ'* is of two kinds: one is primary (*Haqîqî*), the other is subject to it. Primary *ribâ'* is only loans. The other *ribâ'* is called *ribâ' al-fadl* and is akin to primary *ribâ'*”.³³ But in the view of Dr. Muhammad Hamidullah, all such commercial interest are forbidden in Islam in which only money lenders share profit and has no share in loss, and borrowers are required to have share in both the profit and loss. He also clarified that if money has been borrowed from such banks which have provision for sharing of the gain and loss by both the lenders and borrowers, and then there is no legal bar in such dealing from the Islamic point of view. According to him, it will be treated as

Mudârabah in which lenders and partners have equal share in gain and loss and this is allowed in Islam.³⁴

Dr. Muhammad Hamidullah also held the view that all those financial transaction with foreign countries, which are based on interest under the international law are forbidden.³⁵ He clearly pointed out that Islamic law of interest can not be changed by the provisions of the international law of modern period. However, he considered it permissible (*mubah*) to borrow money on interest in case of urgent requirement of money and non-availability of any one willing to advance money without interest.³⁶

Insurance:

As for as modern insurance is concerned, Dr. Muhammad Hamidullah divides it into two types: capitalists and cooperative or mutual. Under the first system, capitalists establish insurance companies and charge a sum from clients/ policy holders more than the risk covered by an insurance policy. The capitalist collects all the profit. Whereas, in the second system, the client share the profit as well as loss. This system of insurance is permitted in Islam.³⁷ He thought that this system of insurance worked in Prophet's time as it is evident from the following practice:

“All the members of a tribe used to contribute an amount to their tribal treasury. In the event of an accident, the accumulated capital was used for the payment of fine of a member. Then the system was developed to ensure that if a tribal treasury could not meet requirement, it could get help from a

neighboring tribe. In case such committee had no necessary funds at its disposal, the centre was eventually held responsible for the payment of the claim.”

Thus a hierarchical system of mutual insurance was set up in the Prophet's time.³⁸

Inheritance of Orphaned Grandson:

Responding to a question about the share of an orphaned grandson in the inheritance of his grandfather, he observed that the clear rules of inheritance are laid down in the *Qur'ân*. These can not be changed because of any particular case. According to the general rule, the son should inherit the property of father; the grandson will inherit from his father and not from grandfather. The problem of his inheritance arises when the father of grandson has already passed away. In his opinion, this problem can be solved by application of other provisions of Islamic law such as Will (*wasiyyat*). Under this rule the grandfather is permitted to give some parts of his property to his grandson.³⁹

3. Political Problems

Taking Help from non-Muslim State:

This question was asked by his friend, Mazhar Mumtaz Quraishi, about the Gulf war I (1991 A.D.), which was waged between Iraq and Kuwait, saying that America was helping Kuwait against Iraq. Dr. Muhammad Hamidullah replied that war between Iraq and Kuwait was civil war among Muslims, started by Iraq to

capture Kuwait's properties like oil. In Islamic perspective, Iraq has no right to do so. In view of Dr. Muhammad Hamidullah, a victim Muslim State can take help from a non-Muslim state for the security of its state in civil war.⁴⁰

Muslims in non-Muslim State:

The Muslims residing in non-Muslim countries faced a very perplexed situation. On one hand, they are required to follow the provisions of Islamic law. On the other hand they are demanded to observe the rules and regulations of the countries wherein they reside. In this respect, the opinion of Abu Yusuf is often quoted **الْمُسْلِمُ مُلْتَزِمٌ أَحْكَامَ الْإِسْلَامِ حَيْثُ مَا كَانَ** (A Muslim is to regulate his conduct according to laws of Islam wherever he may be). Dr. Muhammad Hamidullah says that following the law of Islam in this situation depends upon the freedom enjoyed by the Muslim of foreign countries. In other words, he stressed the point that Islam demands from its followers the adherence to *Sharī'at* in their daily life. But the fact is that a Muslim residing in non-Muslim countries does not have full freedom to follow the Islamic law as he enjoys in *Dâr al-Islâm*.⁴¹

Islamic law has limited scope in non-Muslim countries. In non-Muslim countries, a Muslim is required to follow the rules and regulations of that country. Besides, he has to face many restrictions under the law of the land. In this connection, he mentioned those Muslims who had settled in non-Muslim countries in the period of Prophet (SAW) and followed law according to the

convenience of countries in which they resided like refuges of Abyssinia. They enjoyed full freedom in their religious life.⁴²

System of Government:

One of the major issues which had been debatable among the jurists and 'Ulamâ' of different period was that which form of government has sanction of Islam or Islamic law. In view of Dr. Muhammad Hamidullah, Islam has not fixed any particular form of government. It has been left to the demands and requirements of time. He thought that Islam permitted monarchy too in which the eldest son of a monarch usually becomes the heir-apparent. In support of his view, he cited the following verse:

وَوَرِثَ سُلَيْمَانُ دَاوُدَ (النمل / ١٦)

(And Solomon was David's heir).

He further points out that democracy is also allowed by Islam and even collegial government is not barred either. It is also interesting that he thinks that if there is any government which presents a model of combining the essential features of the above system of government that may be also considered permissible in Islam. According to him, "it does not matter in Islam that which form of government is adopted. What is more important in view of Islam, is doing justice and fair treatment to all subjects of the state without any discrimination. In fact, just treatment and fair conduct of state affair depends on the character of a ruler. A good and just ruler (even though he is a dictator) is acceptable to a common man. In the same way, a tyrant, though he is president of a republic may

not be liked and accepted by common people”.⁴³ Moreover, Dr. Muhammad Hamidullah considered the people duty bound to elect a person of good character, who can truly serve the country and faithfully articulate sentiments of public.⁴⁴

Another important question which is often debated is that who has right to change the government or replace a ruler. According to Dr. Muhammad Hamidullah, the people are authorized to change or replace their ruler because the latter is just like an advocate (*wakil*) who is selected by them in the capacity of clients. So, the people who choose their advocate have natural right to change or replace their advocate.⁴⁵

Scope of *Khilâfat* in Modern Period:

With regard to the prospect of the establishment of *Khilâfat* (or Universal Islamic State) in the present situation. Dr. Muhammad Hamidullah was of the opinion that the institution of *Khilâfat* can be established with the agreement of rulers of Muslim states and acceptance of its membership by them. He thinks that it would be better if each member of them worked as Caliph by rotation (at least under one year term). This formula would help to end the mutual conflict and rivalry among the members of state for the post of caliph.⁴⁶

From the above discussion it is clear that Dr. Muhammad Hamidullah had extensive knowledge of *fiqh* and *Usûl al-Fiqh*, and he was competent for *Ijتهاد*. He expressed his views over different aspects of *fiqh* and whatever he said, authenticated it with evidences. It has been proved that apart from *Qur'ân*, *Hadith*

he also had extensive knowledge of *Sīrah*, Islamic history and *fiqh*. He remained fully aware of the contemporary problems. Besides, his suggestions are also well worth.

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43. Muhammad Hamidullah, *Khutbât-e-Bahâwalpur*, op. cit., p. 124, 356
44. Ibid, p. 355
45. Ibid, pp. 421-422
46. Muhammad Hamidullah, "The Notion of Khilafat and Its Modern Application", *Journal of Pakistan Historical Society* (Karachi), Vol. 4, No. 4, Oct 1956, p. 284; Ghitrif Shahbaz (editor), *Dr. Muhammad Hamidullah-Mujaddid 'Ulûm-e-Sîrat*, op. cit., pp. 76-77

Chapter-7
Dr. Muhammad Hamidullah's
Studies on Islamic International
Law

Dr. Muhammad Hamidullah's Studies on Islamic International Law

In modern concept, international law is defined as “international law is the body of rules which are legally binding on states in their intercourse with each other. These rules are those which govern the relations of states, international organisation, individual etc.”.¹ It means international law is a system of rules, principles and concepts that governs relations among states, international organisations and individual. Modern international law contains two parts viz: private international law (conflict of laws) and public international law (law of nations). Private international law deals with the relations of a government with the subject of another state while public international law is confined to inter-state relations. Although the rules of private international law are the part of the internal law of the state concerned but they could become the part of public international law if are mentioned in treaty.² So, mostly authors have discussed the relations of two countries under public international law (law of nations). Public international law deals with three subjects viz: law of peace, law of war and law of neutrality. The law of peace mostly deals with three or four issues (sovereignty, property, jurisdiction and diplomacy). Law of war discusses the principles relating to the condition of hostility, treatment of prisoners of war, laws of war and that of property captured during war and conditions and clauses of treaty concluded at the end

of war. While, law of neutrality deals with the principles of relationship between a neutral state and hostile states.³

When Islam spread with its universal appeal to the people of different parts of the world, it emerged problem that how the Islamic state would conduct its relations with the non-Muslim states and with the tolerated religious communities within its territory. The jurists developed a special branch of Islamic law, known as the *Siyar*, a term which was applied to Islamic law of nations or international law of Islam.⁴

International law of Islam was one of the favourite areas of research for Dr. Hamidullah. He showed special interest in the field and made significant contributions to this subject as a researcher and author. First of all, he submitted his doctoral thesis entitled “*Die Neutralitat in Islamischen Volkerrech*” (Neutrality in Islamic International Law) to Bonn University (Germany) in 1933 for the award of D.Phil. In this work, he stressed the point that main founder of international law are Muslims and Islamic law is the only law which is equally applicable to every country. He also discussed that Islamic international law not only gives the principles regarding war and peace but also deals with rules and regulations of neutrality.⁵ His post-doctoral thesis entitled “*Documents sur la Diplomatie Musulmane a L'e'poque du Prophete et des Orthodox Khalfes*” (Documents of Muslim Diplomacy in the time of the Prophet of Islam and his Orthodox Caliphs) which was submitted to Sorbonne University (Paris) in 1935 to fulfil the requirement of D.Litt. The work is

divided into two volumes. The first volume discusses the relations of Prophet Muhammad (SAW) and the first four Caliphs with the chiefs of the tribes and the rules of different states. While, second volume contains text of the official documents (i.e. letters, agreements, treaties and administrative directives) prepared or issued in the period of the Prophet Muhammad (SAW) and first four Caliphs.⁶ In 1936, Dr. Hamidullah wrote the book under the title of *Qânûn Bain al-Mumâlik ke Usûl aur Nazîren* keeping in view of requirement of L.L.B. students of Osmania University (Hyderabad). In this work, the learned author has discussed in detail about the principles of relationship between two countries in the condition of war, peace and neutrality. The introduction takes up very important issues for discussion such as origin and development of Islamic state and norms for bilateral relations between two countries. The work also gives details about the working of international law in modern period and takes into consideration the actual position of international law in Egypt, Palestine, India, Greek, Rome and Europe in present days.⁷

The most important contribution of Dr. Hamidullah to this subject is his famous book *Muslim Conduct of State*. It is first systematic study of public international law of Islam in English which defines the principles that regulate the relations of a Muslim state with non-Muslim states and their subjects. These problems arose with the expansion of Islamic state and establishment of contact of Muslim states with other states, especially the friendly ones and their subjects. It is well known that Muslim jurists have discussed this problem under the chapter “Kitâb al-Siyar” in their juridical works. This is very

significant that the author has discussed in detail the origin and evolution of Islamic international law and his discussion is mainly focused on the principles prescribed by the *Shari'at* for relationship with non-Muslim states in three well-known situations of modern international law- peace, hostility and neutrality.⁸ So, he was the first who took up the major issues of the Islamic international law and presented them in a systematic way with the requirements of modern international law. It would not be exaggeration to say that he was Muhammad Hasan al-Shaibani of 20th century.

1. Definition and Nature of Islamic International law:

Dr. Hamidullah defines Islamic international law as “that parts of the law and custom of the land and treaty obligations which a Muslim *de facto* or *de jure* state observes in its dealing with other *de facto* or *de jure* states”. Explaining this point further, he says that what Muslim states accept from other as such through customs of the land and treaties, is the part of Muslim international law. The acceptance of these laws will depend on the will of Muslim state which is controlled through Muslim law.⁹

It is opinion of Dr. Muhammad Hamidullah that Islamic international law is the only law of the world which is equally applicable to all states of the world and is not confined to a few specific nations. Islamic international law eliminates national prejudices of race, colour, and nationality etc, and reminds men that they are the son of the same Adam and Eve, member of same family. In his view, Islam was the first to give a universal call without any

discrimination on the basis of colour, country and language. Every accidental superiority by birth was rejected; recognition was given only to deliberate superiority of one's own conduct and piety. Equality of men and superiority of the pious is the rule laid down by Islam in every sphere of human life.¹⁰ In Islam, people are equal in terms of humanity, respect for human rights and human dignity, and no category or individual is better than others except in piety and good deeds. Cooperation is a principle that all people are required to observe. Allah says:

يَا أَيُّهَا النَّاسُ إِنَّا خَلَقْنَاكُمْ مِنْ ذَكَرٍ وَأُنْثَىٰ وَجَعَلْنَاكُمْ شُعُوبًا وَقَبَائِلَ لِتَعَارَفُوا إِنَّ أَكْرَمَكُمْ عِنْدَ اللَّهِ
أَتْقَاكُمْ إِنَّ اللَّهَ عَلِيمٌ خَبِيرٌ (الحجرات / ١٣)

(O Mankind! We created you from a single (pair) of a male and a female, and made you into nations and tribes that ye may know each other (Not that ye may despise each other). Verily the most honoured of you in the sight of Allah is (he who is) the most righteous of you. And Allah has full knowledge and is well acquainted (with all things).¹¹

2. Origin and Development of Islamic International Law:

Tracing the origin of Islamic international law, Dr. Hamidullah observed that if International law is a law which is equally applicable to all countries of the world and is not confined to a few specific nations, then it originated with the advent of Islam and Muslims are perhaps the only nation in the world which can legitimately claim to possess an international law. An international law which is both truly “international” and “law” began with the Muslims.¹²

In view of Dr. Hamidullah that Islamic international law originated with the Prophet's life at Madinah. Because, Prophet (SAW) and Muslims were not residing in an independent state at Makkah. The status of Islam in Makkah was that of state within state. Muslims lived in the city state of Makkah but they did not follow the old laws of Makkah.¹³

While, in Madinah they founded a state and framed a constitution for it. The Prophet (SAW) was elected the leader (ruler) of this independent state. The rights and duties of the ruler and the ruled were defined and described in detail, and a legal document was prepared in written form which was called Madinah Charter (*Wathâ'iq-e-Madînah*). This document contained considerable details about norms of relationship of the Islamic state with non-Muslims particularly Jews. The rights of Jews in Madinah state, we have discussed in earlier Chapter 3.¹⁴

International law mainly deals with two things i.e. war and peace. With this regard, Dr. Hamidullah says that after establishing city state of Madinah. Prophet (SAW) had enjoyed peace only for a few months. In 2 A.H. the Muslims were confronted with the battle of Badr that took place between city state of Madinah and city state of Makkah. This battle raised many questions relating to conduct of war which were required to be answered. For instance, should war to be declared? And after the war ended it had to be decided whether only adults capable of bearing arms should be killed or should the same fate be meted out to all enemy men, women and children? Should a slave

be put to the sword? Should he be killed only in the battlefield? How is one to treat prisoners of war? Should they be executed or released with or without ransom? Should an exchange of prisoners of war take place? If so, how? The practice and pronouncements of the Prophet provided the guidance for the law which came into being and thus the concept of the Islamic international law was evolved. Prophet Muhammad (SAW) developed Islamic international law during his stay and organisation of state administration in Madinah.¹⁵

Dr. Hamidullah was of the view that when Muslim jurists started writing on jurisprudence and took up the work of codification of Islamic jurisprudence they also codified international law of Islam together with worship, civil and military affairs, inheritance etc. They used the term *Siyar* (conduct) to define the conduct of ruler for war and peace since the Prophet's time. In his opinion, Zaid Ibn Ali was the first who included a chapter on international law under the title *Kitâb al-Siyar* in his book *Al-Majmû'ah fî al-Fiqh*. But his student, Abu Hanifah may be considered the first jurist who developed it as a distinct branch of Islamic law. It is well-known that Abu Hanifah delivered lectures on matters relating to war and peace and these lectures were compiled by his disciple, Imam Muhammad Ibn Hasan al-Shaibani in *Kitâb al-Siyar al-Saghîr* and *Kitâb al-Siyar al-Kabîr*. The text of Imam Shaibani was later translated into English by Majid Khadduri entitled *The Islamic law of Nations: Shaibani's Siyar*. Besides, Imam Awzai, a well-known jurist of the same period had also written a book on this important subject. Though Awzai's work is not available, but its critique by Abu Yusuf

entitled *Al-Radd-o-'Ala Siyar al-Awzai* has come down to us. The work was also referred to by Imam Shafii in his famous book *Kitâb al-Umm*.¹⁶

In view of these evidences, Dr. Hamidullah observed that the term *Siyar* was popularly used by jurists for international law in different period.

3. Law of Peace:

Sovereignty of Independent State:

In view of Dr. Muhammad Hamidullah, sovereignty and independence of a state depends upon its rights to maintain international relations. If a state has absolute rights for maintaining foreign relations, it is to be considered independent. If this right is qualified and restricted, the state is partly sovereign and in case the right are non-existent, it will be a non-sovereign state.¹⁷

Referring to Ibn Khaldun, Dr. Hamidullah defines the Islamic concept of independence as “the non-existence of any [external] power to enforce its will upon him, i.e., an independent sovereign”. In other words, the independent state has the right to administer all its internal and external affairs in such a way that there is no interfere of any foreign power (state). In the opinion of Dr. Hamidullah, an independent state has absolute right to take action (external and internal) in the interest of the country. This absolute right is actually a reflection of individual freedom of everyman which is explained by the jurist as *الاصل فى الناس الحرية* (The original freedom of every man).¹⁸

With regard to the sovereign of Islamic state, Dr. Hamidullah was of the opinion that Allah is the only sovereign of whole earth and constituent states in

the same manner as being the creator of all the things in His dominion and evaluating the potentialities. He only appoints the deserving human to be his deputy on the earth. The deputy (*Khalifah*) of Allah is definitely His messenger, who is selected or appointed by means of revelation and guided on every front through revelation. After the death of a messenger, this divine selection is to be done by the consensus of the Muslim community. So, human ruler on the earth is a trustee of Allah and is principal authority of all the parts of Muslim territory.¹⁹

Property of Islamic State:

As regards proprietary rights of a state, Hamidullah was of the view that states hold proprietary right on their property as an individual has property right on his property. The most important thing in their property is territory of the states. Territory not only contains the surface of a part of the earth over which a state exercises its jurisdiction, but also consists of what is below and above this land.²⁰

With regard to the state property, Hamidullah has discussed the following principles of Islamic international law.

1. Boundaries of the states will be determined by treaties between the neighbouring states. If there is a river or lake on the frontier, the boundaries will be considered in the middle of water.
2. Water will be the part of adjoining land and is the property of state which rules on that land.

3. Regarding the open sea, he held the opinion that there was no particular rule for its ownership. He stated that some Muslim scholars considered it under the control of non-Muslims; some acknowledged it the property of Muslim state while some other treated it as the neutral property.²¹

To acquire the property of other state, Hamidullah gives the principle of Islamic law that when a Muslim state takes control over some parts of the other state, this part will become the property of Muslim state. This property can be acquired by war, treaty, purchase, mutual exchange of property and on the basis of will of the inhabitants of that territory. In this connection, he clarified that if public property is acquired, it could not be given to anyone for his private use. All the people have right over public property on behalf of the Muslim state. So, in Muslim territory, canals, rivers and other waterways will open to all. The traders and foreigners can bring anything from their country through waterway but they will be required to pay tax under the prescribed rules.²²

Positions of non-Muslims and Apostates in Islamic State:

According to Dr. Muhammad Hamidullah, non-Muslim protected subjects of an Islamic state are *Zimmî*. *Zimmah* is actually a mutual contract between non-Muslims and Muslim State. *Zimmî* is required to pay protection tax, called *Jizyah* about 12 to 48 dirham per head annually. Islamic government will give full protection to their life, religious belief and property and they will be exempted from many other obligations. They would not pay *Zakât* and

military service would be compulsory for them. Their cases will be dealt by their co-religionist in accordance of their personal law.²³

With regard to the settlement of non-Muslims Dr. Hamidullah says that non-Muslims are to be permitted to settle anywhere in the territory of Islamic state except Arabia,²⁴ because the Holy *Qur'ân* has declared in verse:

يَا أَيُّهَا الَّذِينَ آمَنُوا إِنَّمَا الْمُشْرِكُونَ نَجَسٌ فَلَا يَقْرَبُوا الْمَسْجِدَ الْحَرَامَ بَعْدَ عَامِهِمْ هَذَا وَإِنْ خِفْتُمْ عَيْلَةً فَسَوْفَ يُغْنِيكُمُ اللَّهُ مِنْ فَضْلِهِ إِنْ شَاءَ إِنَّ اللَّهَ عَلِيمٌ حَكِيمٌ (التوبة / ٢٨)

(O ye who believe! Truly the Pagans are unclean, so let them not, after this year of theirs approach the sacred mosque. And if ye fear poverty, soon will Allah enrich you, if He wills, out of His bounty, for Allah is All-Knowing, All Wise.)²⁵

Referring to the sharh Shami, he says that non-Muslims of Islamic state could be appointed at any administrative post in the Islamic state such as *wazârat* (ministry), *safârat* (ambassadorship). He pointed out that the Prophet (SAW) had sent Amr Ibn Umaiya al-Zamari (who had not yet embraced Islam) as his envoy to the court of the Negus.²⁶

In the opinion of Dr. Muhammad Hamidullah a *zimmi* would forfeit his rights, if he is involved in any activity of the following nature.

1. Rebellion
2. Denial of the payment of *Jizyah*
3. Disobedience to the Government

4. Fornication with a free Muslim woman
5. Espionage for and giving asylum to the enemy of the state
6. Rivalling of Allah, His messengers and His books
7. Causing a Muslim to Apostasy
8. Indulging in brigandage
9. Publicly acting upon something in contravention of the cherished principles of Islam
10. Indulging in usurious transactions²⁷

With regard to apostasy, Dr. Muhammad Hamidullah says, apostasy means conversion of a Muslim to other religion or refusal to believe in any obligatory commands of Islam.²⁸

With regard to the treatment of apostate, Dr. Hamidullah is of the view that there would be discussion with the apostate on the religious matter about which he had doubt utmost efforts would be made to remove his doubts. Secondly he would be given time to re-embrace Islam. After all these efforts, if he refuses, he will be given the punishment of death sentence and his property will be distributed among his Muslim heirs. He says that this punishment is prescribed by the *Qur'ân*, traditions of the Prophet (SAW) and the same is established by the *Ijmâ'* (Consensus) of *Sahâbah* (RA) and legal verdicts of the jurists of later period.²⁹ Dr. Muhammad Hamidullah further clarified that the punishment of death sentence for apostates is not given due to change of religion but because of political treachery. No government of the world likes

treacherous persons. Instead, they are dealt with sternly and given persons severe punishment. Similarly, none can be forced to embrace Islam but if a person becomes a member of Islamic community, his treachery can not be tolerated and so he will be awarded punishment of death sentence. Dr. Muhammad Hamidullah also emphasized that there are many persons who may be exempted from or given leniency in the prescribed punishment of apostasy such as delirious, a melancholy and perplexed man, a minor, intoxicated person, one who had declared his faith in Islam under coercion and a person whose acceptance of Islam is not established. Besides, a woman would not be condemned to death, but imprisoned. An old man from whom no offspring is expected, many be also exempted.³⁰

Positions of Foreigners (*Musta'min*) in Islamic State:

In view of Dr. Muhammad Hamidullah, *Musta'min* means a person who is temporarily residing in a foreign country by its permission. This term is used for both persons i.e. a Muslim temporarily residing in a non-Muslim country and a non-Muslim residing in a Muslim territory.³¹

In view of Dr. Hamidullah, the residents of a state which has friendly relations (through treaty) with the Muslim state could enter the Islamic territory without any prior permission. It is quite evident from the practice of the Prophet (SAW). Once a non-Muslim foreigner came to Madinah with a herd of sheep and goats, apparently, on the basis of previous permission. There was no objection from the Prophet (SAW). Instead, he purchased goats from him.³² If

there is no treaty but relations are cordial, the Muslim state can permit and this permission may also be given in future. The permission may be given individually and collectively. Collective permission will be given by the ruler (*Imam*) of the Islamic state. A Muslim is entitled to give permission in individual capacity but a non-Muslim has no such right.³³

As regards the treatment with non-Muslims of another country, Dr. Hamidullah was of the opinion that they would be treated in the same way as non-Muslim subjects of Muslim state were treated. They will be provided full security. In view of Dr. Hamidullah the cases of non-Muslim foreigners may be decided in Muslim courts but they are not bound to follow the penal code of Islam, such as he can not be prevented from wine drinking. In this connection, he pointed out difference of opinion among Imam Abu Yusuf and Imam Muhammad Shaibani. The former was of the opinion that Islamic penal code will be enforced in the cases of non-Muslim foreigners also except that related to wine drinking. While, the latter made distinction between the crimes relating to the violation of the rights of Allah (*Huqûq al-Allah*) and the right of people (*Huqûq al-'Ibâd*). According to him in the first case a non-Muslim foreigner would not be punished but in the second he would be subjected to Islamic punishment.³⁴

Dr. Hamidullah says that if the war starts non-Muslim foreigners may be permitted to return their country with their belongings except weapons of war. They would not be allowed to go enemy country in case it is feared that they

would give military support to the enemy. It was also clarified that the validity of the immunity of a *Musta'min* (foreigner) depends on his conduct. If he acts a spy, his immunity would come to end. Similarly, if he becomes an ordinary belligerent immediately after leaving Islamic territory, his immunity would also become null and void.³⁵ It is noteworthy to mention Dr. Hamidullah's view regarding the termination of immunity of non-Muslim foreigners. He mentions that the immunity will be terminated if non-Muslim foreigner has any action in the following.

1. Expiration of the prescribed period
2. Breach of conditions expressly mentioned therein as annulling the permit or implied as such in every permit.
3. Forged permission on discovery
4. Transmission secrets of the Muslim state to the enemy
5. To become belligerent after crossing Islamic territory³⁶

Position of Muslims in non-Muslim country:

Referring to the opinion of Abu Yusuf that "a Muslim is to regulate his conduct according to laws of Islam wherever he may be", Dr. Muhammad Hamidullah says that observing Islamic law in this situation depends upon the freedom enjoyed by the Muslims of foreign countries. In other words, he stressed the point that Islam demands from its followers to adhere to *Shari'at* in their daily life. But the fact is that a Muslim residing in non-Muslim countries does not have full freedom to follow the Islamic law as he enjoys in *Dâr al-Islâm*.³⁷

Islamic law has limited scope in non-Muslim countries. In non-Muslim countries, a Muslim is required to follow the rules and regulations of that country. Besides, he has to face many restrictions under law of the land. In this connection, he mentioned those Muslim communities which had settled in non-Muslim countries in the period of Prophet (SAW) and followed the law of these countries like refuge of Abyssinia. They enjoyed full freedom in their religious life.³⁸

In the opinion of Dr. Hamidullah, Muslims in a foreign country are required to behave and work as law abiding citizen, follow the conditions of their permit, refrain from any act of treachery even if the war broke out between their country and the country where they resided as foreigner. Muslims are also forbidden from doing any wrong to their co-citizens. Moreover, the Muslims are not allowed to join the armed forces in a foreign country except in self defence or when it is feared that the enemies of their protector state would not respect the neutrality of the Muslim residents.³⁹

Dr. Hamidullah was of the opinion that all the Muslims are brother wherever they were living. He quoted the Quranic verse:

إِنَّمَا الْمُؤْمِنُونَ إِخْوَةٌ (الحجرات / ١٠)

(The believers are but a single brotherhood)

In view of this Quranic injunction, he thought that when a Muslim migrated from his non-Muslim state and settled in an Islamic country, he would become a full-fledged Muslim citizen of the Muslim state and would have same

rights and obligations as the other Muslim citizens have.⁴⁰ With regard to the criteria to become a resident of a Islamic state, Dr. Hamidullah says “a foreign Muslim is required to have the intention of at least a fortnight’s stay to become a settled and regular citizen of Muslim state”. In this connection, he cited the rule of the *Qasr*-prayer that if a Muslim undertakes a journey and becomes a legal traveller (*Shari’ musâfir*), he gets a concession in his daily prayer in term of reduction of *raka’ât*. But if he decides to stay in a place for fifteen days, he becomes a settled resident of that place and the concession of traveller is withdrawn.⁴¹

Diplomatic Relations:

In view of Dr. Hamidullah, the object of diplomacy is to find out peaceful solution of international problems and promotion of harmonious relationship among different states.

According to Dr. Hamidullah there are three categories of diplomacy.

1. The first is mutual negotiation. This can be materialised through permanent or special envoys.
2. The second kind of diplomacy is affected through mediation. In this type of diplomacy, a third party which has friendly relation with both the contending states, serves as mediator and gives suggestions for an amicable settlement of their disputes. He says that in the battle of Badr, Majidi Ibn ‘Amr, who was an ally of both the groups of people- Muslims and Makkans, intervened as mediator and both detachment parted from each other quietly.

3. The third and most important kind of diplomacy is arbitration. In this diplomacy, the disputes of two states are to be resolved by one or more umpires chosen by the concerned parties. The relevant case cited by him is related to the treatment to be meted out to the Jewish tribes of Banu-Quraizah after their capitulation. It was decided that a certain person should decide who was selected as arbitrator by both the parties. His decision was accepted by the Prophet (SAW) the arbitral award was carried out in toto. ⁴²

Diplomacy in Islam:

According to Hamidullah the diplomacy in Islam originated in the time of the Prophet (SAW). He says, the Prophet had sent his emissaries in different places such as Al-Abbas was sent to Makkah, Anas Ibn Abi Murthid al-Ghanawi to Awas (near Taif) and Munzir Ibn Amr-al-Saidi to Najad.

In view of Hamidullah, the commercial relations of Islamic state with other countries were established earlier than political and diplomatic ones. In this connection, clear guidance is available in the rules and practices of the Prophet (SAW)'s time. Prophet Muhammad (SAW) gave encouragement to external trade as it is well-known that he abolished all inter-provincial customs duties within the realm. While foreign trade remained subject to the usual *tithes* (*Ushûr*) or whatever percentage was stipulated by treaties and conventions between states. Sometimes, merchandise of minors or women were exempted from custom duties in Islamic territories. ⁴³

Regarding permanent diplomacy in Islam, Hamidullah was of the opinion that it was totally temporary in the beginning stage. The permanent diplomacy came into existence in the reign of Umayyad and lived into account till the destruction of Baghdad by Mongole in 656 A.H. in this connection, he quoted Sayyed Amir Ali's thought:

“When the provincial governors became the feudatories of the empire and the sovereignty of the Caliph dwindled into more or less effective Suzerainty, the confidential messenger were turned into legates of the Pontiffs and acted as his resident agents in the courts of Nishapur, Merv, Mosul, Damascuss etc. Like the Papal legates in the later medieval times in Europe, they accompanied the sovereigns to whom they were accredited in their military marches. We find them not only in the camps of Alp-Arsalan and Malik Shah, but also in those of Naruddin Mahmud and Saladin (Salahuddin), ever active and sometimes meddlesome; occasionally as under the later Ayubids, reconciling contending princes and settling fratricidal strife”.⁴⁴

“Each sovereign on his side maintained a commissary called *Shahna* (read: *Shihnah*) at the potential court, charged with the duty of keenly watching the moves of the game on the part of his rivals, for the struggle for predominating influence over the source of all legitimate authority was as great at Baghdad as in papal Rome. Shahnas were usually

stationed, besides the capital, in places like Wasit, Bussorah, Tikrit, etc.”

“The Abbasid sovereigns frequently employed a special envoy to transact confidential business with neighbouring potentates. The office was called the *Nizâm al-Hadrâtain*”.⁴⁵

Emissaries:

In view of Hamidullah, Muslim emissaries, representing caliphs and sultans, are appointed from among confidants who are reputed for their knowledge, experienced and trustworthiness. They are also chosen for their external physical appearance, ability, courage and presence of mind. He also clarified that an emissary should be a man of insight in affairs, orthodoxy in religion, eminence and trusted among the Muslims and profound in the knowledge of law.⁴⁶ According to him a non-Muslim may be selected as emissary of a Muslim state. Referring to the practice of the Prophet (SAW) that he had sent Amr ibn Umayyah al-Zamari (who had not yet embraced Islam) as his envoy to the court of the Negus.⁴⁷ But there are certain categories of people who are not fit to be selected as emissary. These included the Muslims punished for scandalizing respected ladies (*Qazaf*), minors, women, slaves, blind people, the immoral (*Fâsiq*), men of suspected or notoriously bad conduct, Muslims who are prisoners in the hands of the other state, Muslim traders in the territory of the other state, Muslim subjects of the other non-Muslim country.⁴⁸

This is a part of the diplomatic norms that the emissaries are to be given official letters addressed to the heads of state of the receiving countries. These letters served either as letters of credence, empowering the emissary to deliver an oral message or contained general statements on the purpose of the mission, indicating that the secret information was to be delivered orally by the emissary.⁴⁹ Dr. Hamidullah has also the credit of discovering many of such letters which are given in his famous work *Majmû'ah al-Wathâ'iq al-Siyâsiyah li al-'Ahd al-Nabawî wal- Khilâfat al-Râshidah*.

With regard to the reception of emissary of foreign state in Islamic country, Dr. Hamidullah was of the view that this practice also originated in the period of Prophet (SAW). The Prophet used to receive foreign envoys in the great mosque where the pillar of embassies (*Ustuwânt al-Wufûd*) still commemorates the place. It is recorded that Prophet and his companions had usually put on fine dress at the time of ceremonial reception of emissaries. Many large houses were also constructed in Madinah to serve the purpose of residence of foreign guests'. The house of Ramlah bint al-Harith was popularly known as the *Dâr al-Dhaifân* (guest house).⁵⁰

Privileges of Emissary:

Protection of Life

In view of Dr. Hamidullah, envoys along with those who are in their company will enjoy full personal immunity. They would be guaranteed protection of their life and name would be allowed to cause any harm to their

person. If envoys or any of his companions is a criminal of state from which he is sent, Muslim state will treat him only as envoy/ companion of envoy not a criminal.⁵¹

Religious Freedom

In view of Dr. Hamidullah, Islamic law gives religious freedom to envoys. They are free to perform their prayers and observe their customs and traditions. It is recorded in the *Hadith* that Prophet Muhammad (SAW) allowed the delegation of the Christians of Najran to do their religious service in the *Masjid-e-Nabawi* according to their own belief.⁵²

Exemption from Custom Duties

Referring to al-Shaibani, Dr. Hamidullah pointed out that if a country exempts Muslim envoys from custom duties and other taxes, the envoys of that country will enjoy the same privileges in Muslim country. Otherwise, if the Muslim state desire, they may be required to pay ordinary dues like foreign visitor. In the same way the property of the envoys is exempt from import duties in Muslim territory, if reciprocated.⁵³

4. Law of War:

Dr. Muhammad Hamidullah gave much importance to the problems of war under international law of Islam. So, he discussed these problems in a detailed way. According to him, there may be different causes for hostile relations between two or more states. Some of these major causes included seizure of property of one state by another state and its people, detention of

ambassadors, occupation of the adversary's territory. He was of the opinion that in case of hostile relations even before starting war, a state may block frontiers of the enemy country and prevent the entry and exit of the people. But, if war starts, the diplomatic relations with the hostile country may be broken off, ambassadors called back and implementation of treaty suspended.⁵⁴

Dr. Hamidullah was of the opinion that Islam not only considered war as an undesirable thing but had also laid down provisions for evaluating intention of Muslims to take part in war. In Islamic law, Muslims should join war with the intention of obeying the command of Allah. He also says that Muslims will take part in war only with the aim of establishment of Sovereignty of Allah on the earth and this war will be in the path of Allah.⁵⁵ In this connection he cited the verse of *Qur'ân*:

إِنَّ اللَّهَ اشْتَرَى مِنَ الْمُؤْمِنِينَ أَنفُسَهُمْ وَأَمْوَالَهُمْ بِأَنَّ لَهُمُ الْجَنَّةَ يُقَاتِلُونَ فِي سَبِيلِ اللَّهِ فَيَقْتُلُونَ
وَيُقْتَلُونَ وَعَدَّ عَلَيْهِمْ حَقًّا فِي التَّوْرَةِ وَالْإِنْجِيلِ وَالْقُرْآنِ وَمَنْ أَوْفَى بِعَهْدِهِ مِنَ اللَّهِ فَاسْتَبِشِرُوا بِبَيْعِكُمْ
الَّذِي بَايَعْتُمْ بِهِ وَذَلِكَ هُوَ الْفَوْزُ الْعَظِيمُ (التوبة / ١١١)

(Lo! Allah hath bought from the believers their lives and their wealth because paradise will be theirs: they shall fight in the path of Allah and shall slay and be slain. It is a promise which is binding on Him in the Torah and the Gospel and the Quran, and who fulfillth his covenant better than Allah? Rejoice then in your bargain that ye have made, for that is the supreme triumph).⁵⁶

Lawful wars

Discussing the permissibility of war in Islam, Dr. Hamidullah pointed out that war was permitted by the Islamic law only in the following conditions and that only these wars would be considered in the path of Allah.

The Continuation of an ongoing war:

Those wars may be considered lawful which are started after these have been stopped for some reasons like separation of both the parties without any formal treaty of peace, the suspension of warlike activities by mutual agreement for a fixed period etc. In support of his view he quoted the following verses.⁵⁷

فَإِذَا انْسَلَخَ الْأَشْهُرُ الْحُرُمُ فَاقْتُلُوا الْمُشْرِكِينَ حَيْثُ وَجَدْتُمُوهُمْ وَخُذُوهُمْ وَأَحْصُرُوهُمْ وَأَقْلُبُوا
لَهُمْ كُلَّ مَرْصِدٍ (التوبة / ٥)

(And when the months of immunity (on account of the treaty of peace) have passed, slay the associators wherever ye find them, and take them (Captive) and besiege them, and prepare for them each ambush)⁵⁸

Defensive War:

According to him defensive war is also permitted in Islam. This war may be waged when Muslim enemy either invades Muslim territory or behave in an unbearable manner. At that time, it becomes obligatory for Muslims to wage war for the security of their territory, community and system of government. In this connection, he cited the Quranic verse:⁵⁹

وَقَاتِلُوا فِي سَبِيلِ اللَّهِ الَّذِينَ يُقَاتِلُونَكُمْ وَلَا تَعْتَدُوا إِنَّ اللَّهَ لَا يُحِبُّ الْمُعْتَدِينَ (البقرة / ١٩٠)

(Fight in the path of Allah against those who fight against you, but do not transgress. Lo! Allah Loveth not transgressors)⁶⁰

Sympathetic War:

If Muslims residing in non-Muslim foreign country, are subjected to atrocities and oppression by the government. A Muslim state which has no peace treaty and friendly relation with this country may defend Muslims against the atrocities of the non-Muslim state. He says that the Quranic directive for this war is quite clear in the following verses.⁶¹

وَالَّذِينَ آمَنُوا وَلَمْ يُهَاجِرُوا مَا لَكُمْ مِّنْ وَلَايَتِهِمْ مِّنْ شَيْءٍ حَتَّىٰ يُهَاجِرُوا وَإِنِ اسْتَنْصَرُوكُمْ فِي
الدِّينِ فَعَلَيْكُمُ النَّصْرُ إِلَّا عَلَىٰ قَوْمٍ بَيْنَكُمْ وَبَيْنَهُمْ مِّيثَاقٌ وَاللَّهُ بِمَا تَعْمَلُونَ بَصِيرٌ (الأنفال / ٧٢)

(And those who believe but have not left their homes, ye have no duty to protect till they leave their homes; but if they seek help from you in the matter of religion, then it is your duty to help (them) except against a folk between whom and you there is a treaty. Allah is seer of what ye do)⁶²

وَمَا لَكُمْ لَا تُقَاتِلُونَ فِي سَبِيلِ اللَّهِ وَالْمُسْتَضْعَفِينَ مِنَ الرِّجَالِ وَالنِّسَاءِ وَالْوِلْدَانِ الَّذِينَ يَقُولُونَ رَبَّنَا
أَخْرِجْنَا مِنْ هَذِهِ الْقَرْيَةِ الظَّالِمِ أَهْلُهَا وَاجْعَل لَّنَا مِن لَّدُنكَ وَلِيًّا وَاجْعَل لَّنَا مِن لَّدُنكَ نَصِيرًا الَّذِينَ
آمَنُوا يُقَاتِلُونَ فِي سَبِيلِ اللَّهِ وَالَّذِينَ كَفَرُوا يُقَاتِلُونَ فِي سَبِيلِ الطَّاغُوتِ (النساء / ٧٥-٧٦)

(How should ye not fight for the cause of Allah and of the feeble among men and of the women and the children who are crying: Our Lord! Bring us forth out from this town of which the people are oppressors! Oh! Give us from Thy presence some protecting friend! Oh! Give us

from Thy presence some defender! Those who believe do battle for the cause of the Allah and those who disbelieve do battle for the cause of the Devil)⁶³

Punitive War:

If certain groups of people revolt against the Muslim state and disturb peaceful atmosphere. Islamic state, in view of Dr. Hamidullah, is permitted to wage war against such groups to suppress their revolt. This may be supported by the fact that Hazrat Abu Bakr (RA) waged war against the apostates and those who refused to pay *Zakât*.⁶⁴

Idealistic War:

If any non-Muslim state creates obstacles in the way of preaching Islam by a Muslim state, the latter, in view of Dr. Hamidullah, is permitted to declare war against such non-Muslim state. This war will be considered in the path of Allah and this may be called “idealistic war”.⁶⁵

مُوَّالِدِيَّ أَرْسَلَ رَسُولَهُ بِالْهُدَىٰ وَدِينِ الْحَقِّ لِيُظَاهِرَهُ، عَلَى الدِّينِ كُلِّهِ وَلَوْ كَرِهَ الْمُشْرِكُونَ (التوبة / ٣٣)

(He is who hath sent His Messenger (i.e. Muhammad) with the guidance and the religion of truth that He may cause it to prevail over all religions, however much the associators may be averse)⁶⁶

كُنْتُمْ خَيْرَ أُمَّةٍ أُخْرِجَتْ لِلنَّاسِ تَأْمُرُونَ بِالْمَعْرُوفِ وَتَنْهَوْنَ عَنِ الْمُنْكَرِ وَتُؤْمِنُونَ بِاللَّهِ (ال عمران / ١١٠)

(Ye (i.e. the Muslims) are the best community that hath been raised up for mankind. Ye enjoin right conduct and forbid indecency and ye believe in Allah)⁶⁷

Declaration of War:

In modern international law, the declaration of war is necessary so as to prevent unnecessary loss to the country about which it is to be waged. In the view of Dr. Hamidullah, Islam is the only religion which instructed Muslim that no war could be waged without prior declaration or notification except defensive and punitive wars. Though, in other wars, Muslim must not attack on unbelievers before inviting them to accept Islam or to agree to pay the protection tax (*Jizyah*).⁶⁸

Dr. Hamidullah says, on the declaration of war, all friendly relations come to end between the belligerent states as well as their subjects. Diplomats are called back to their countries and forces of the state would be entitled to fight the enemy. Officials and private citizens will not be permitted to enter the enemy country, official and private citizens all are prohibited from giving the enemy any help, relief, comfort or information. The case of Hatib of Prophet's time is the best example, who attempted to send information to the enemy regarding Muslim designs.⁶⁹

With regard to the economic dealing after declaration of war, Dr. Hamidullah was of the view that it is responsibility of Islamic state to return the trusts and debts to enemy state, after the war has been declared. In this connection he quoted the example of Prophet's migration to Madinah. Prophet (SAW) had deputed his cousin Hazrat Ali (RA) to return all trusts of the Makkan inhabitants to them. Similarly, when the Jews of Madinah were exiled. The Prophet (SAW) said that they could take all their belonging with them and

debts which were due over Muslims shall be paid at the time when they become due. Yet, if the Jewish bankers wanted an immediate repayment; they were at liberty to enter into new contacts with their Muslim clients by foregoing some percentage.⁷⁰

As regard the status of treaties and pacts after declaration of war, Dr. Hamidullah pointed out that all the treaties and pacts will not come to the end. The following details would make the point more clear.

1. Treaties which have achieved their aim such as fixing of boundaries and the like
2. Treaties of friendship and good neighbourliness, alliance and mutual assistance and the like are rendered null and void if such controlling parties choose to declare war upon each other.
3. The treaties which are concluded during the war for maintaining the mutual conduct.
4. The commercial pacts and the likes depend on the decision of the countries. There may be cancelled, suspended or modified.
5. There are some treaties which were suspended during the wartimes. These can be revived or retained after the end of the war such as the treaties of post and telegrams.⁷¹

Permitted and Forbidden Action during War

Permitted Action

Dr. Hamidullah has given the following actions which are permitted for

Muslim military during the war.

1. Enemy combatants might be killed, wounded, pursued and made captive. Attacks can be done at night. If any non-combatant is killed in such attacks, Muslim army will not be responsible for the cause.⁷²
2. Ruses may be used for obscuring and discouraging the enemy, because the Prophet (SAW) said الحرب خدعة war is ruse. For this purpose, secret agencies may be also used for obtaining information about the enemy. False news can also be propagated for creating misunderstanding among the different sections of enemy and his allies. Money may be also used for creating conflicts among the sections of enemy. In this connection, Dr. Hamidullah quoted an incident of Prophet Muhammad (SAW). Once a famine was affecting Makkah and the Prophet sent a handsome contribution of five hundred gold coins towards the relief work. On this action many Makkan said "From this action Muhammad wants to win the affection of youngsters of Makkah".⁷³

It was a case of financial assistance to the non-Muslims affected by natural calamity on humanitarian ground. It seems unreasonable to cite it in support of the above matter.

3. To defend against the enemy, modern weapons may be made and used in warfare, as it is evident from the following.⁷⁴

وَأَعِدُّوا لَهُمْ مَا اسْتَطَعْتُمْ مِنْ قُوَّةٍ وَمِنْ رِبَاطِ الْخَيْلِ تُرْهِبُونَ بِهِ عَدُوَّ اللَّهِ وَعَدُوَّكُمْ وَآخَرِينَ مِنْ دُونِهِمْ لَا تَعْلَمُونَهُمُ اللَّهُ يَعْلَمُهُمْ (الأنفال / ٦٠)

(Against them make ready your strength to the utmost of your power, including steel of war, to strike terror into (the heart of) the enemies of Allah and your enemies and other besides whom you may not know but whom Allah doth know)⁷⁵

Forbidden Action

Apart from discussing the permissible things during war, Dr. Hamidullah has also given details about those actions which are forbidden in Islamic law in the same situation. Some of them may be discussed as:

1. Cruel and tortuous ways of killing, killing of non-combatants. It is permitted to kill only those who are able to fight physically. Women, minors, servants, slaves, the blind, monks hermits and very old persons are exempted from killing. Traders, merchants, contractors and the like are to be spared, if they do not take part in actual fighting.
2. Devastation, destruction of harvest and cutting trees unnecessarily
3. Parents will not be killed, even if they are non-Muslims and in the enemy army. Burning a captured man or animal to death and the use of poisonous arrows is forbidden.⁷⁶

Treatment with Prisoners of War:

Dr. Hamidullah pointed out that prisoners would not be killed as it is established by a consensus of the companions of the Prophet (SAW).⁷⁷ However, those prisoners whose actions are detrimental to the interest of the

state can be punished according to the nature of their crimes. The prisoners will be treated well and be provided all necessary facilities. Their problems would be tackled with sympathy. The *Sunnah* of the Prophet (SAW) is quite clear about this point. The Prophet (SAW) is reported to have said with regard to the prisoners of the battle of Badr: “Take heed of the recommendation to treat the prisoners fairly”. The learned author also quoted the view of Imam Abu Yusuf that prisoners must be fed and well treated until a decision is taken about them.⁷⁸ Moreover, it was also clarified by him that Islamic law leaves it at the discretion of Islamic state to behead, enslave, release on paying ransom, or exchange them with Muslim prisoners of war.⁷⁹

With regard to the Muslims prisoners captured by enemy, Dr. Hamidullah was of the view that they were under no obligation to submit or obey the orders of the enemy; if they were able to escape or destroy the enemy property, they should do so. This is obligatory on Muslim prisoners to refuse to provide information to enemy, to take part in war against Islam and to abandon their faith unless forced to do so. He further stated that it was duty of Muslim state to seek their release by giving money from public treasury, as it is prescribed in the *Qur'ân* that a portion of the state income is to be spent for freeing the necks (*Fî al-Riqâb*) which means seeking freedom of prisoners and slaves through state resources.⁸⁰

إِنَّمَا الصَّدَقَاتُ لِلْفُقَرَاءِ وَالْمَسْكِينِ وَالْعَامِلِينَ عَلَيْهَا وَالْمُؤَلَّفَةِ قُلُوبُهُمْ وَفِي الرِّقَابِ وَالْغَارِمِينَ وَفِي سَبِيلِ اللَّهِ وَابْنِ السَّبِيلِ فَرِيضَةً مِّنَ اللَّهِ (التوبة / ٦٠)

(Alms are for the poor and the needy, and those employed to administer the (funds): for those whose hearts have been (recently) reconciled (to truth), for those in bondage and in debt, in the cause of Allah, and for the wayfarer: (Thus it is) ordained by Allah).⁸¹

Property of the Conquered People

As regards the property captured from the enemy. Dr. Hamidullah was of the view that it would be at the discretion of Muslim ruler. He may distribute it as booty or preserve as state property or may leave to its former owner. In this connection, he says that Prophet (SAW) sometime distributed the conquered land among the victorious army as booty (*Ghanimah*), while in some cases he had handed over the property to the vanquished ones.⁸²

With regard to the right of non-Muslims over the property of the Muslims captured by them, Dr. Hamidullah observed that the latter had the same right as held by Muslims in similar cases. A non-Muslim is authorised to sell or dispose of the property of Muslims captured by him.⁸³

Regarding the postliminium (return of things), it is opinion of Dr. Hamidullah. "if anything in a case possessed by Muslim was captured by enemy and was again taken back by the Muslim army. It had to be handed over to the ex-owner (enemy) upon production of proof before distribution of the booty. If it is distributed before the ownership was proved then the ex-owner may acquire it from the new owner upon payment of its cost".⁸⁴

Treaties and Truces

With regard to the duration of treaty, the jurists have different opinions. According to Dr. Hamidullah most of the jurists are of the opinion that the maximum period of treaty should be ten years as was established by the treaty of Hudaibiyah. In his view, the ruler is the supreme authority for finalising the clauses of the treaty. If he is not available at the time of concluding of the treaty, then any other competent authority will ratify the treaty.⁸⁵

Dr. Hamidullah was of the view that the treaty should be preserved in written form and should contain the date of the writing of the treaty and the date on which it comes into force, duration of the treaty, solemn promises for the observance and execution of the treaty, the signature of the duly authorised persons and the sanction for execution. Apart from concluding new treaty, the former treaties may be amended in part at any time by mutual consent of the parties concerned.⁸⁶

He further explained that a treaty get legal sanction if it comes into existence with the consent of the two states. Its terms and conditions will remain binding for the entire duration of the treaty and these will become part of our law. He writes "In this way (treaty), the conditions and obligations agreed upon and accepted by Islamic state would become part of Islamic law and state will be bound to follow them during the operative period of treaty".⁸⁷

In view of Dr. Hamidullah truces may be divided into four categories according to the limit of time and areas.

1. The first one is the truce in which time and area of operation are fixed and limited. This generally occurs during war in battlefield, so that the parties may carry on parleys, bury the dead or take precaution against common danger such as flood etc.
2. The second may be for a fixed place but for unlimited time. He says that this type truce was not available in early Islamic history but capitulations of Ottoman Empire with European power especially France can be cited in this respect. In this capitulation sultan Sulaiman granted rights and privileges to the subjects Christian nations for residing and trading in Ottoman kingdom.
3. The third one is for a fixed period and unlimited area. This type of truce may be an opportunity to conclude an agreement of peace after negotiation. It is also possible that after the end of the period of this treaty, both the parties have liberty to attack at each other without prior permission or declaration. The most important example of this kind of truce is that of Hudaibiyah concluded between the Prophet (SAW) and the Makkans, which brought peace for a fixed period of ten years.
4. The forth and the last kind of truce is for unlimited in term of time and place. This usually comes into being at the end of war, when one was vanquished or both the parties were exhausted.⁸⁸

With regard to the authority to make truce for a limited period in a limited area, Dr. Hamidullah was of the view that this authority truce rests with

the commander-in-chief of Muslim army. The other three kinds of truce may be concluded by the central government or its authorised officers.⁸⁹

5. Law of Neutrality:

Neutrality in Islam:

Where a state does not join war between two countries and maintains peace with both the warring countries, such state is considered neutral and this stand is called neutrality. Orientalists and western writers generally hold the view that there is no place of neutrality in Islamic International law. They say that Islam divides the world only into two parts viz: *Dâr al-Islâm* and *Dâr al-Harab* and it does not admit any other part between them. But with the reference to the original sources, Dr. Hamidullah has refuted their view and cited the following Quranic verses which direct the Muslims to take care of those states who had remained neutral.

إِلَّا الَّذِينَ عَاهَدْتُمْ مِنَ الْمُشْرِكِينَ ثُمَّ لَمْ يَنْقُصُوا شَيْئًا وَلَمْ يُظَاهِرُوا عَلَيْكُمْ أَحَدًا فَأَتِمُوا إِلَيْهِمْ
عَهْدَهُمْ إِلَىٰ مُدَّتِهِمْ إِنَّ اللَّهَ يُحِبُّ الْمُتَّقِينَ (التوبة / ٤)

(Excepting those of the idolaters with whom ye (Muslims) have a treaty, and who have since abated nothing of your rights nor have supported anyone against you. (As for those), fulfil their treaty to them till their term. Lo! Allah loveth those who keep their duty (unto Him))⁹⁰

لَا يَنْهَاكُمُ اللَّهُ عَنِ الَّذِينَ لَمْ يُقَاتِلُواكُمْ فِي الدِّينِ وَلَمْ يُخْرِجُواكُمْ مِنْ دِيَارِكُمْ أَنْ تَبَرُّوهُمْ وَتُقْسِطُوا
إِلَيْهِمْ إِنَّ اللَّهَ يُحِبُّ الْمُقْسِطِينَ إِنَّمَا يَنْهَاكُمُ اللَّهُ عَنِ الَّذِينَ قَاتَلُواكُمْ فِي الدِّينِ وَأَخْرَجُواكُمْ مِنْ دِيَارِكُمْ
وَوَظَاهِرُوا عَلَىٰ إِخْرَاجِكُمْ أَنْ تَوَلَّوهُمْ وَمَنْ يَتَوَلَّهُمْ فَأُولَٰئِكَ هُمُ الظَّالِمُونَ (الممتحنة / ٨-٩)

(Allah forbiddeth you not regarding those who warred not against you on account of religion and drove you not out from your homes. that ye should show them kindness and deal justly with them. Lo! Allah loveth the just. Allah forbiddeth you only regarding those who warred against you on account of religion and have driven you out from your homes and helped to drive you out, that ye make friends of them. Whosoever maketh friends of them-(all such are wrong doers))⁹¹

Moreover, Dr. Hamidullah referred to another verse in which the term *I'tizâl* was used and he thought that it meant neutrality.

إِلَّا الَّذِينَ يَصِلُونَ إِلَى قَوْمٍ بَيْنَكُمْ وَبَيْنَهُمْ مِيثَاقٌ أَوْ جَاؤُواكُمْ حَصِرَتْ صُدُورُهُمْ أَنْ يُقَاتِلُوكُمْ أَوْ يُقَاتِلُوا قَوْمَهُمْ وَلَوْ شَاءَ اللَّهُ لَسَلَّطَهُمْ عَلَيْكُمْ فَلَقَاتِلُوكُمْ فَإِنْ اعْتَزَلُوكُمْ فَلَمْ يُقَاتِلُوكُمْ وَالْقَوَا إِلَيْكُمُ السَّلَامَ فَمَا جَعَلَ اللَّهُ لَكُمْ عَلَيْهِمْ سَبِيلًا (النساء / ٩٠)

(Except those who seek refuge with a people between whom and you there is a covenant, or (those who) come unto you because their hearts forbid them to make war on you or to make war their own folk. Had Allah willed, He could have given them power over you so that assuredly they would have fought you. So, if they remain neutral regarding you (*I'tazalûkum*) and wage not war against you and offer you peace, Allah alloweth you no way against them).⁹²

Moreover, the following *Ahadith* also defines clear provision for neutrality.

1. The Prophet (SAW) is reported to have said that soon civil wars would ensue among the Muslims community and the pious believer would be

the one who would sit at home during the unrest and would take part with neither faction (*I'tazala*). The narrator adds, it was owing to this Hadith that many a pious Muslims remained neutral during the war between Hazrat Ali (RA) and Hazrat Muawiyah (RA)

2. The Prophet (SAW) is said to have predicted that towards the last days of the world, a terrible fight would break out between the believers and Rumis (Westerners). The Rumis would make this offer to one Muslim group: "Let us fight alone against those Muslims who have captured our wives and children". The Muslim group would reply: "No! We can not desert our brethren". This war would seal the end of the power of the Rumis.⁹³

In addition to the above Dr. Hamidullah has made references to those treaties which were concluded between Prophet (SAW) and different tribes of Madinah for neutral behaviour. For instance, in the war of between Banu al-Nazir and Muslims, Banu Quraizah remained neutral. Similarly, Ghatafan was neutral in the war between Muslims and Banu al-Nazir of Khaibar. Besides, many treaties were concluded with different tribes residing around Madinah on the basis of neutrality to consolidate the Muslim power. The treaty with Banu Zamrah shows that the Muslims agreed that they would not attack Banu Zamrah, nor would help its enemies and vice versa. Another treaty concluded between Prophet and Banu Ghifar (who lived near the sea coast of the Red sea) had assurance from the Prophet for helping Banu Ghifar if any one or tribe attacked them. If the Prophet required their help, they will help, except in wars

waged in the name of the religion. Moreover, he says that a special word *islâl* was also used in the treaty of Hudaibiyah for the provisions of neutrality which signified the unsheathing of sword as well as violation of neutrality and secret help to the enemy of the other contacting parties.⁹⁴

In view of these evidences, Dr. Hamidullah's standpoint is quite right that Islamic international law had clear provision for neutrality.

Law of Neutrality:

Referring to Al-Sharakhi's *Sharah al-Siyar al-Kabîr*, Dr. Hamidullah brought out important laws of neutrality. Some of them may be given as:

1. If the two states are at war, they are duty bound not to start the same against the neutral state. The war can be carried on only in the territories of warring states, high seas and in those areas which belong to none. Moreover, the warring states are supposed to respect the territory of neutral states including land and waters.⁹⁵
2. It is obligatory on the warring states to keep away from waging war in the territory of neutral state.⁹⁶
3. If the neutrality of any state is violated by the warring states, they are bound to pay indemnity.⁹⁷
4. If a state has concluded a treaty of peace with the Muslims and is attacked by a third state which made them prisoners, and subsequently the Muslims waged an independent war against this state and captured the prisoners of their friendly state, they would be slaves of the

Muslims. For the third state had not violated the jurisdiction of the Muslim state in capturing them. If the third state secures its capture, it will become the rightful owner of the same.⁹⁸

5. If Muslim citizens are staying in a foreign country which is attacked by a third state, they must not fight against that state (which is at peace with the Muslim state) except when they find themselves in danger. In this case, they may fight against that third state for self defence.⁹⁹
6. If a formidable force enters Muslim territory with permission in order to cross to another territory to fight their enemies they can be attacked while in the Muslim territory by an enemy. The Muslim state has no responsibility to defend them against their enemy.¹⁰⁰
7. "If the subjects of a foreign country come to the Islamic territory by permission and intend to proceed to a third state at war with the Muslims, in order to join forces with them against the Muslim state, passage will be denied to them. For the passport secured for them only freedom of stay and freedom of return to their own country. Beyond this, the Muslim state is right in denying them all that is harmful to the Muslims. No doubt if one or two of them want to proceed to the third state for commercial purposes, this may be allowed for the same case. But the case would be different if they are a formidable force".¹⁰¹

It is clear from above discussion that Dr. Hamidullah presented principles of Islamic international law on different aspects of peace, war and neutrality. In the concept of peace, he dwelt at length the principles of

sovereignty, independence, jurisdiction and diplomatic relations. In war, he brought to forth the laws of commencement of war, kinds of war, declaration of war, prisoners of war international treaties, termination of war and its effects. The learned scholar has discussed the concept of neutrality in the light of *Qur'ân*, *Hadith* and historical facts and has examined the principles under which the neutral behaviour can be accepted.

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Conclusion

Conclusion

From the above discussion, it is clear that Dr, Hamidullah was a great scholar and encyclopaedic writer on Islamic law. He contributed to all major aspects of Islamic law and these works can be categorized mainly in three parts- Concept and sources of Islamic law, socio-economic law and law governing state administration and international relations. The works are considered original and of high standard in the academic circle from the point of view of exhaustive use of sources, quality of material and critical approach. For his works, Dr. Hamidullah consulted a lot of material from published and unpublished sources available in the libraries of India, France, Germany, North Africa, Syria, Egypt, Turkey and Hijaz. Many times, he himself visited the historical places to verify the facts given in the works as he visited Madinah, Makkah and Taif in 1932 and 1939 to determine the location of various battlefields and other places. These facts are enough to prove the authenticity of the works of Dr. Hamidullah.

Dr. Hamidullah's works on Islamic law has also distinction from the point of view that his studies with reference to original sources help to dispel the doubts created by the orientalist and other writers about different aspects of Islamic law. Through his research work, he impressed on the western scholars to understand the importance and originality of Islamic law and to give up the false claim that it had borrowed many points from Roman law. In fact his discussion has placed the Islamic law on the higher pedestal.

Another feature of Dr. Hamidullah's works on Islamic law is that they provide guidance to the Muslims in the new situations of the present day world. The works give *Sharī'at's* attitude towards many new aspects of social, economic and political life such as *Imāmat* of woman, marriage of Siamese twin sisters, woman in army, legal profession in view of Islamic law, imposition of additional taxes, insurance, system of governance, scope of *Khilāfat* in modern times etc.

A few important works of Dr. Hamidullah are concluded here. One important work of his is *Imām Abū Hanīfah Kī Tadwīn Qanūn-e-Islāmī*. The work examined the importance and methodology of the codification of Islamic law as done by Abu Hanifah with the assistance of his distinguished disciples. The work also showed that each and every problem was discussed thoroughly and every member of the board was free to express his opinion. The work shows that jurists of other school of *Fiqh* also attempted to codify the *Fiqh* of their own school in pattern of Imam Abu Hanifah.

From the study of *Khutbāt-e-Bahāwalpūr*, it is clear that the work, first of all, compared the Islamic law with laws of different states of the world and sights the superiority of Islamic law over them. The work also provides details about the sources of Islamic law and their role in the development of Islamic law. It is also important that the work highlighted the institutions of *Qāzī* and *Mufī* by whom Islamic law was developed. The work also pointed out the importance of *Ijtehad* and methodology of its application. The scope of *Ijtehad* in modern period has been discussed in the book. The work also gives the legal

opinion of the author on the different problems of Muslims of modern times. The work also critically examined the international law of different countries in pre-Islamic period and compared them with Islamic international law. The work concluded that there was no international law in true sense of the world before and after Islam. The principles of Islamic international law are also discussed in the work.

In *Muslim Conduct of State*, the author has discussed the principles prescribed by *Shari'at* for relationship with non-Muslim states in three well known situations- peace, hostility and neutrality. The work also pointed out the name of jurists who developed the branch of Islamic international law such as Imam Zain al-Abidin, Imam Muhammad al-Shaibani and Imam Abu Hanifah. It is first work which discussed neutrality with the evidences of *Qur'an* and *Hadith* and cleared the doubts of western writers who said that there is no place of neutrality in Islamic international law.

In the book *Qânûn Bain al-Mumâlik ke Usûl aur Nazîren*, the author discussed in detail the principles of relationship between two countries in the condition of war, peace and neutrality. The work also compares the concept of international law of different countries with Islamic international law and brings infallibility of Islamic international law to forth. The work also critically examined the real situation of international law of Egypt, Palestine, India, Greek, Rome and Europe in present days. The work *Introduction to Islam*, pointed out contributions of Muslims in the development of Islamic law. The work also gives *Shari'at's* attitude on the social, economic and political

problems of Muslims of modern world. In *First written Constitution in the world*, the author pointed out the main causes of drafting the constitution and condition of Madinah at that time. The author also mentioned the rights of Muslims and non-Muslims in Islamic state.

Besides, the article "The Influence of Roman law on Muslim Law" critically examined the influence of western law especially Roman law on Muslim law. After thorough study, the author concluded that it was totally wrong to trace the origin of Islamic law from Roman law, only those customs from outside were taken on which *Qur'ân* and *Hadîth* were silent and that they were not against the spirit of *Qur'ân* and *Hadîth*.

The nationality, personal status of non-Muslim subject and their aliens and jurisdiction of Muslim state over foreigners are discussed in the article "Islamic Notion of Conflict of laws". It is noteworthy that the work gives attitude of Islamic law toward these issues.

In relation to *usûl al-fiqh*, he highlighted that *usûl al-fiqh* (principle of jurisprudence) was discovered first of all by Muslims which provides the intellectual and logical foundation to Islamic law. Likewise, Islamic jurisprudence is not just collection of commandments of Allah but it is very much law and the person below the rank of law maker cannot amend or repeal it. It is also important that Dr. Hamidullah has discussed some new point under the sources of Islamic law which were not taken up by other jurists. He considered treaty, the *Shari'at* of the earlier Prophets, practices of the

companions of Holy Prophet Muhammad (SAW), customs and usages as the sources of Islamic law. It is also important that Dr. Muhammad Hamidullah has thoroughly discussed the methodology of Imam Abu Hanifah regarding had codification of Islamic law. In this connection he has given main focus to the point that Imam Abu Hanifah had given much importance to collective *Ijtehâd* (*Ijmâ'*). In relation to Islamic jurisprudence, his discussion about *Ijtehâd* is of quite significant. Pointing out the importance of *Ijtehâd*, he discussed the method of its application in modern period. He also highlighted the role of *Ijtehâd* to make Islamic law of dynamic nature and method of bringing out legal points through *Ijtehâd*. In his view, the door of *Ijtehâd* is open for forever and some jurists should be in every time who can solve emerging problem.

As far as Islamic international law is concerned, Dr. Muhammad Hamidullah was the first Muslim scholar who discussed in detail its important aspects taking into account the requirements of modern international law. He contributed to this subject in English and Urdu both the languages. While discussing different issues of Islamic international law, it appears that Dr. Muhammad Hamidullah has kept some modern works particularly Oppenheim's *International Law* before him. Some new subjects discussed by him under Islamic international law are conflict of laws (private international law), diplomacy and neutrality in Islamic international law.

Dr. Muhammad Hamidullah has discussed in a very comprehensive way the rules and regulations governing international relations under Islamic law. He also highlighted the Islamic principles of sovereignty and non-interference

in the internal affairs of other states and Islam's concern for world peace, harmony and neutrality. He also defined the principles of peaceful co-existence in pluralistic society. In this regard, the provisions of *Shari'at* for Muslims in non-Muslim countries and vice versa explained by Dr. Hamidullah are noteworthy. In his opinion *Jihâd* is *Fardh-e-Kifâyah* (not compulsory for everyone). He defines *Jihâd* as "self-exertion in peaceful and personal compliance with the details of Islam (constitutes) the major or superior *Jihâd*".

Dr. Muhammad Hamidullah has thrown a substantial jurisprudential glow on the socio-economic and political problems of Muslims world and justified his standpoints by logical reasoning. Taking legal points from *Qur'ân* and *Hadîth*, Dr. Hamidullah himself distinct from other jurist as is evident from the study of problems. There are many other jurisprudential problems on which he differs from major contemporaries. His opinion can be contradicted but cannot be signed out and kept out of purview of discourse. The problems of modernity are well dealt by him and his opinion stand like a pole star in the dark night.

From the perusal of Dr. Hamidullah's works, it is evident that he was very much aware with the socio-economic and political problems of the world. In solving these problems, he firstly consulted *Qur'ân*, *Hadîth* and *Sîrah* of Prophet Muhammad (SAW), the history of Islam and works of earlier jurists. If he could not find any solution in these works then he exercised *Ijتهاد*. In this regard, he was of the view that if no solution was available in *Qur'ân* and *Hadîth* then the door of *Ijتهاد* is open for the jurist as discussed above. But at

the same time he says that the opinion or verdict of one jurist regarding the problem will not be the last words, other jurists may differ with the given opinion. So, he asserts that the 'Ulamâ' should look over the solution forwarded by past jurists in the light of *Qur'ân* and *Hadîth* in solving the problems.

As per family tradition, Dr. Hamidullah was to Shafii school of jurisprudence but as far as jurisprudential problems were concerned, he did not paid allegiance to a single school of Islamic jurisprudence which ever solution seems to him to be more close to *Qu'rân* and *Hadîth*, he adopted the same of whatever school it is.

It appears from the study of Dr. Hamidullah' works on Islamic law that certain topics were discussed by him very briefly. For example, with regard to the qualification of *Mujtahid*, he gave his points merely within a couple of lines. The concept of *Dâr al-Harb* and *Dâr al-Islâm*, which is an important aspect of Islamic jurisprudence, was not discussed by Dr. Hamidullah at all. At some places his reference to the *Qur'ân* and *Hadîth* is irrelevant. For example, in *Khutbât-e-Bahâwalpur*, while answering a question from the audiences to weather the profession of lawyer is lawful, he quoted the following verse:

حُرِّمَتْ عَلَيْكُمْ أُمَّهَاتُكُمْ وَبَنَاتُكُمْ وَأَخْوَاتُكُمْ وَعَمَّاتُكُمْ وَخَالَاتُكُمْ وَبَنَاتُ الْأَخِ وَبَنَاتُ الْأُخْتِ
وَأُمَّهَاتُكُمْ اللَّائِي أَرْضَعْنَكُمْ وَأَخْوَاتُكُمْ مِنَ الرَّضَاعَةِ وَأُمَّهَاتُ نِسَائِكُمْ وَرَبَائِكُمُ اللَّائِي فِي
حُجُورِكُمْ مِّنْ نِّسَائِكُمُ اللَّائِي دَخَلْتُمْ بِهِنَّ فَإِن لَّمْ تَكُونُوا دَخَلْتُمْ بِهِنَّ فَلَا جُنَاحَ عَلَيْكُمْ وَخَالَاتُ
أَبْنَائِكُمُ الَّذِينَ مِنْ أَصْلَابِكُمْ وَأَن تَجْمَعُوا بَيْنَ الْأُخْتَيْنِ إِلَّا مَا قَدْ سَلَفَ (النساء / ٢٣-٢٤)

and Dr. Hamidullah said that except these things, the *Qur'ân* allows all things.

Therefore the legal profession is lawful as per *Sharî'at*. This verse, as well-

known, was revealed in relation to the marriage and prohibited degrees. Moreover, Dr. Hamidullah at one place equates the law derived from *Ijmâ'* with that of Quranic law and has declared its acceptance obligatory and one who does not follow it will be sinner. These points have enough scope to be discussed and disputed.

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